

10-0740-cv

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

EDWARD CARTER, FRANK FIORILLO, KEVIN LAMM,
JOSEPH NOFI, THOMAS SNYDER,
Plaintiffs-Appellants,

v.

INCORPORATED VILLAGE OF OCEAN BEACH, JOSEPH C. LOEFFLER, JR., MAYOR,
individually and in his official capacity, NATALIE K. ROGERS, FORMER MAYOR,
individually and in her official capacity, OCEAN BEACH POLICE DEPARTMENT,
GEORGE B. HESSE, Acting Deputy Police Chief, individually and in his official
capacity, SUFFOLK COUNTY, SUFFOLK COUNTY POLICE DEPARTMENT,
SUFFOLK COUNTY DEPARTMENT OF CIVIL SERVICE,
ALISON SANCHEZ, individually and in her official capacity,

Defendants-Appellees,

SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE,

Defendant.

*On Appeal from the United States District Court
for the Eastern District of New York (Central Islip)*

**JOINT APPENDIX
VOLUME VI OF VI
Pages A3325 to A3730**

RIVKIN RADLER LLP

Attorneys for Defendants-Appellees

*Incorporated Village of Ocean Beach,
Joseph C. Loeffler, Jr., Mayor, Natalie K. Rogers,
Former Mayor, Ocean Beach Police Department*

926 RXR Plaza

West Tower, Ninth Floor

Uniondale, New York 11556

516-357-3000

THOMPSON WIGDOR & GILLY LLP

Attorneys for Plaintiffs-Appellants

*Edward Carter, Frank Fiorillo,
Kevin Lamm, Joseph Nofi,
Thomas Snyder*

85 Fifth Avenue, Fifth Floor

New York, New York 10003

212-257-6800

(Additional Counsel On the Reverse)

MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C.

Attorneys for Defendant-Appellee

*George B. Hesse, Acting Deputy Police Chief,
individually and in his official capacity*

530 Saw Mill River Road

Elmsford, New York 10523

914-345-3701

CHRISTINE MALAFI

SUFFOLK COUNTY ATTORNEY

Attorneys for Defendants-Appellees

*Suffolk County, Suffolk County Police Department,
Suffolk County Department of Civil Service,
Alison Sanchez, individually and in
her official capacity*

H. Lee Dennison Building

100 Veterans Memorial Highway

P.O. Box 6100

Hauppauge, New York 11788

631-853-4049

Table of Contents

	<u>Page</u>
<u>Volume I</u>	
District Court Docket Entries	A1
Complaint and Jury Demand, dated March 21, 2007	A41
Answer of Defendants Suffolk County, Suffolk County Police Department, Suffolk County Department of Civil Service and Alison Sanchez (“Suffolk County Defendants”), dated May 9, 2007	A90
Answer of Defendants Incorporated Village of Ocean Beach; Mayor Joseph C. Loeffler, Jr., individually and in his official capacity; former mayor Natalie K. Rogers, individually and in her official capacity, Ocean Beach Police Department (“Ocean Beach Defendants”) and Acting Deputy Police Chief George B. Hesse, individually and in his official capacity (“Hesse”), dated May 1, 2007	A102
Civil Cause for Pretrial Conference, dated October 16, 2009	A117
Notice of Motion by Defendant Hesse for Summary Judgment, dated October 14, 2009	A118
Memorandum of Law by Defendant Hesse in Support of Motion, dated October 14, 2009	A121
Rule 56.1 Statement by Defendant Hesse, dated October 14, 2009	A157
Memorandum of Law by Plaintiffs in Opposition to Motion by Defendant Hesse, dated December 29, 2009	A169.1
Rule 56.1 Counter-Statement by Plaintiffs in Response to Defendant Hesse’s Statement, dated December 29, 2009	A170
Response by Defendant Hesse to Plaintiffs’ Counter-Statement, dated January 15, 2010	A240

Table of Contents
(Continued)

	<u>Page</u>
Declaration of James M. Skelly, for Defendant Hesse, in Further Support of Reply Memorandum of Law, dated January 15, 2010	A259
Exhibit 1 to Skelly Declaration - Deposition Testimony of Paul Carollo, taken August 11, 2009	A262
Exhibit 2 to Skelly Declaration - Deposition Testimony of Christopher James Moran, taken June 8, 2009	A337
Exhibit 3 to Skelly Declaration - Handwritten Notes	A390
Memorandum of Law by Ocean Beach Defendants in Support of Motion for Summary Judgment, dated October 14, 2009	A391
Rule 56.1 Statement by Ocean Beach Defendants, dated October 14, 2009	A428
Notice of Motion by Suffolk County Defendants for Summary Judgment, dated October 14, 2009	A439
Memorandum of Law by Suffolk County Defendants in Support of Motion, dated October 14, 2009	A441
Rule 56.1 Statement by Suffolk County Defendants, dated October 14, 2009	A470
Memorandum of Law by Plaintiffs in Opposition to Motion by Suffolk County Defendants, dated December 29, 2009	A475
Rule 56.1 Counter-Statement by Plaintiffs in Response to Suffolk County Defendants' Statement, dated December 29, 2009	A495
Declaration of Andrew S. Goodstadt, for Plaintiffs, in Opposition to Motions by Defendants, dated December 29, 2009	A513

Table of Contents
(Continued)

	<u>Page</u>
Exhibit 4 to Goodstadt Declaration - First Set of Interrogatories by Plaintiffs to Ocean Beach Defendants, dated July 11, 2007	A524
Exhibit 5 to Goodstadt Declaration - Response by Ocean Beach Defendants to Plaintiffs' First Set of Interrogatories, dated November 9, 2007	A536
Exhibit 6 to Goodstadt Declaration - First Set of Interrogatories by Plaintiffs to Defendant Hesse, dated July 11, 2007	A542
Exhibit 7 to Goodstadt Declaration - Responses and Objections by Defendant Hesse to Plaintiffs' First Set of Interrogatories, dated June 20, 2008 ...	A553
Exhibit 8 to Goodstadt Declaration - Responses and Objections by Defendant Hesse to Plaintiffs' Second Set of Interrogatories, dated August 5, 2009	A565
Exhibit 9 to Goodstadt Declaration - Third Set of Interrogatories by Plaintiffs to Suffolk County Defendants, dated July 10, 2009, with Attachment	A576
Exhibit 10 to Goodstadt Declaration - Responses by Suffolk County Defendants to Plaintiffs' Third Set of Interrogatories, dated August 5, 2009	A585
Exhibit 11 to Goodstadt Declaration - Responses by Defendant Alison Sanchez ("Sanchez") to Plaintiffs' First Set of Interrogatories, dated August 11, 2009	A589
Exhibit 12 to Goodstadt Declaration - Supplemental Response by Defendant Sanchez to Plaintiffs' First Set of Interrogatories, dated September 14, 2009	A593

Table of Contents
(Continued)

	<u>Page</u>
Exhibit 13 to Goodstadt Declaration - Transcript of Telephone Conversation between Edward Carter and George Hesse	A597
Exhibit 14 to Goodstadt Declaration - Transcript of Telephone Conversation between Edward Carter and George Hesse	A611
Exhibit 15 to Goodstadt Declaration - Transcript of Telephone Conversation between Chris Moran and Kevin Lamm	A622
Exhibit 16 to Goodstadt Declaration - Transcript of Telephone Conversation between Chris Moran and Kevin Lamm	A625
 <u>Volume II</u> 	
Exhibit 17 to Goodstadt Declaration - The Schwartz Report Ocean Beach Police Corruption Online Forum	A629
Exhibit 18 to Goodstadt Declaration - The Schwartz Report Ocean Beach Police Corruption Online Forum	A933
Exhibit 19 to Goodstadt Declaration - Printout from The Schwartz Report Website	A941
Exhibit 20 to Goodstadt Declaration - Affidavit of Martin Schwartz, sworn to June 30, 2009, with List of IP Addresses	A942
Exhibit 21 to Goodstadt Declaration - Message, dated May 15, 2006	A971
Exhibit 23 to Goodstadt Declaration - Various Letters, with Cablevision Records	A972

Table of Contents
(Continued)

	<u>Page</u>
Exhibit 24 to Goodstadt Declaration - Various Letters, with Southampton Town Police Department Records	A984
Exhibit 25 to Goodstadt Declaration - Facsimile between Tony Fischetti to Mary Anne Minerva, dated January 11, 2007, with Attachments	A997
Exhibit 26 to Goodstadt Declaration - Excerpt from Part-Time/Seasonal Police Officer Requirements	A1001
Exhibit 73 to Goodstadt Declaration - Affidavit of Edward Carter in Support of Plaintiff's Rule 56.1 Counter-Statement of Material Facts in Dispute, sworn to December 29, 2009	A1002.1
Exhibit 74 to Goodstadt Declaration - Affidavit of Frank Fiorillo in Support of Plaintiffs' Rule 56.1 Counter-Statements of Material Facts in Dispute, sworn to December 29, 2009	A1002.5
Exhibit 75 to Goodstadt Declaration - Affidavit of Kevin Lamm in Support of Plaintiffs' Rule 56.1 Counter-Statements of Material Facts in Dispute, sworn to December 29, 2009	A1002.9
Exhibit 76 to Goodstadt Declaration - Affidavit of Joseph Nofi in Support of Plaintiffs' Rule 56.1 Counter-Statements of Material Facts in Dispute, sworn to December 29, 2009	A1002.13
Exhibit 77 to Goodstadt Declaration - Affidavit of Thomas Snyder in Support of Plaintiffs' Rule 56.1 Counter-Statements of Material Facts in Dispute, sworn to December 29, 2009	A1002.17

Table of Contents
(Continued)

	<u>Page</u>
Exhibit 78 to Goodstadt Declaration - Deposition Testimony of Edward Carter, taken September 16, 2008	A1003
<u>Volume III</u>	
Exhibit 79 to Goodstadt Declaration - Deposition Testimony of Joseph Nofi, taken September 9, 2008	A1387
Exhibit 80 to Goodstadt Declaration - Deposition Testimony of Thomas Snyder, taken September 24, 2008	A1488
Exhibit 81 to Goodstadt Declaration - Deposition Testimony of Frank Fiorillo, taken February 20, 2009	A1615
Exhibit 82 to Goodstadt Declaration - Deposition Testimony of Kevin Lamm, taken November 19, 2008	A1736
<u>Volume IV</u>	
Exhibit 84 to Goodstadt Declaration - Deposition Testimony of Tyree Bacon, taken February 12, 2009	A2102
Exhibit 85 to Goodstadt Declaration - Deposition Testimony of Richard Bosetti, taken February 10, 2009	A2218
Exhibit 86 to Goodstadt Declaration - Deposition Testimony of Gary Bosetti, taken February 23, 2009	A2373
Exhibit 87 to Goodstadt Declaration - Deposition Testimony of Allison Sanchez, taken February 18, 2009	A2469

Table of Contents
(Continued)

	<u>Page</u>
Exhibit 88 to Goodstadt Declaration - Deposition Testimony of Mary Anne Minerva, taken November 7, 2008	A2557
Exhibit 89 to Goodstadt Declaration - Deposition Testimony of Cynthia Distefano, taken June 5, 2009	A2669
 <u>Volume V</u>	
Exhibit 90 to Goodstadt Declaration - Deposition Testimony of George Hesse, taken June 3, 2009	A2745
Exhibit 91 to Goodstadt Declaration - Deposition Testimony of Edward Paradiso, taken July 27, 2009	A2981
Exhibit 92 to Goodstadt Declaration - Deposition Testimony of Natalie K. Rogers, taken November 14, 2008	A3143
Exhibit 93 to Goodstadt Declaration - Deposition Testimony of Joseph C. Loeffler, taken February 25, 2009	A3242
 <u>Volume VI</u>	
Exhibit 95 to Goodstadt Declaration - Deposition Testimony of Patrick John Cherry, taken November 18, 2008	A3325
Affidavit of Mary Anne Minerva, for Ocean Beach Defendants, in Support of Motion, sworn to October 14, 2009	A3447
Exhibit O to Minerva Affidavit - Meeting Minutes of the Board of Trustees of the Incorporated Village of Ocean Beach held on January 28, 2006	A3450

Table of Contents
(Continued)

	<u>Page</u>
Exhibit P to Minerva Affidavit - Thomas Snyder Time Sheets from the Incorporated Village of Ocean Beach	A3458
Exhibit Q to Minerva Affidavit - Edward Carter Time Sheets from the Incorporated Village of Ocean Beach	A3482
Exhibit R to Minerva Affidavit - Joseph Nofi Time Sheets from the Incorporated Village of Ocean Beach	A3504
Exhibit S to Minerva Affidavit - Kevin Lamm Time Sheets from the Incorporated Village of Ocean Beach	A3514
Exhibit T to Minerva Affidavit - Frank Fiorillo Time Sheets from the Incorporated Village of Ocean Beach	A3527
Exhibit U to Minerva Affidavit - Suffolk County Employment Application of Thomas Snyder	A3542
Exhibit V to Minerva Affidavit - Driver License of Edward Carter	A3543
Exhibit W to Minerva Affidavit - Ocean Beach Seasonal Police Officer Candidates Investigator's Summary for Joseph Nofi, dated August 26, 1999	A3544
Exhibit X to Minerva Affidavit - Ocean Beach Seasonal Police Officer Candidates Investigator's Summary for Kevin Lamm, dated January 14, 1998	A3545

Table of Contents
(Continued)

	<u>Page</u>
Exhibit Y to Minerva Affidavit - Ocean Beach Seasonal Police Officer Candidates Investigator's Summary for Frank Fiorillo, dated July 23, 2002	A3546
Memorandum of Law by Plaintiffs in Opposition to Motion by Ocean Beach Defendants, dated December 29, 2009	A3547
Rule 56.1 Counter-Statement by Plaintiffs in Response to Ocean Beach Defendants' Statement, dated December 29, 2009	A3586
Supplemental Declaration of Kenneth A. Novikoff, for Ocean Beach Defendants, in Support of Motion, dated January 15, 2010	A3651
Exhibit II to Novikoff Supplemental Declaration - Printout from the Flickr Website	A3654
Exhibit JJ to Novikoff Supplemental Declaration - Police Department Employee Roster	A3655
Affidavit of Annie Robinson, for Ocean Beach Defendants, in Support of Motion, sworn to January 12, 2010	A3656
Exhibit 1 to Robinson Affidavit - Disposition of Record in <i>The People of the State of NY</i> <i>v. Christopher Schalick</i> , dated May 21, 2005	A3659
Exhibit 2 to Robinson Affidavit - Disposition of Record in <i>The People of the State of NY</i> <i>v. Bryan Van Koot</i> , dated October 13, 2007	A3666
Reply Memorandum of Law by Ocean Beach Defendants in Further Support of Motion, dated January 15, 2010	A3678
Opinion and Order of the Honorable Sandra J. Feuerstein, dated February 19, 2010, Appealed From	A3707

Table of Contents
(Continued)

	<u>Page</u>
Judgment of the United States District Court, Eastern District of New York, dated February 22, 2010	A3727
Notice of Appeal, dated February 25, 2010	A3728

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 1 of 122

Page 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDWARD CARTER, FRANK FIORILLO,)
KEVIN LAMM, JOSEPH NOFI, and)
THOMAS SNYDER,)
Plaintiffs,)
vs.) CV 07 1215
INCORPORATED VILLAGE OF OCEAN)
BEACH; MAYOR JOSEPH C. LOEFFLER)
JR., individually and in his)
Official capacity; former mayor)
NATALIE K. ROGERS, individually)
and in her official capacity,)
OCEAN BEACH POLICE DEPARTMENT;)
ACTING DEPUTY POLICE CHIEF)
GEORGE B. HESSE, individually)
And in his official capacity;)
SUFFOLK COUNTY; SUFFOLK COUNTY)
POLICE DEPARTMENT, SUFFOLK)
COUNTY DEPARTMENT OF CIVIL)
SERVICE; and ALLISON SANCHEZ,)
Individually and in her)
Official capacity,
Defendants.
-----)

VIDEOTAPED DEPOSITION OF PATRICK JOHN CHERRY

New York, New York

Tuesday, November 18, 2008

Reported by:
Philip Rizzuti
JOB NO. 18815

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 2 of 122

1 2 3 4 November 18, 2008 5 9:37 a.m. 6 7 Videotaped deposition of PATRICK 8 JOHN CHERRY, held at the offices of 9 Thompson Wigdor & Gilly, 85 Fifth 10 Avenue, New York, New York, pursuant to 11 subpoena, before Philip Rizzuti, a 12 Notary Public of the State of New York 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 2	Page 4
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 3	Page 5

2 (Pages 2 to 5)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 3 of 122

Page 6	Page 8
<p>1 Cherry</p> <p>2 THE VIDEOGRAPHER: This is the the</p> <p>3 start of tape number 1 of the videotape</p> <p>4 deposition of Patrick Cherry in the</p> <p>5 matter of Carter versus Incorporated</p> <p>6 Village of Ocean Beach. Today's date is</p> <p>7 November 18, 2008 at approximately 9:37</p> <p>8 a.m.</p> <p>9 Will the court reporter please</p> <p>10 swear in the witness.</p> <p>11 PAT RICK JOHN C H E R R Y ,</p> <p>12 called as a witness, having been duly</p> <p>13 sworn by a Notary Public, was examined</p> <p>14 and testified as follows:</p> <p>15 EXAMINATION BY</p> <p>16 MR. GOODSTADT:</p> <p>17 MR. NOVIKOFF: Same stip as in</p> <p>18 the other depositions?</p> <p>19 MR. GOODSTADT: Yes. Federal</p> <p>20 rules and local civil rules govern.</p> <p>21 MR. NOVIKOFF: Yes.</p> <p>22 Q. Good morning, Mr. Cherry.</p> <p>23 A. Good morning.</p> <p>24 Q. My name is Andrew Goodstadt, I am</p> <p>25 an attorney at the law firm of Thompson Wigdor</p>	<p>1 Cherry</p> <p>2 who gave it to me later on in the evening.</p> <p>3 MR. NOVIKOFF: That is a yes or no</p> <p>4 question.</p> <p>5 Q. If you look up in the top left</p> <p>6 where it says to, you see that under the</p> <p>7 caption?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And it says to Patrick Cherry, 4</p> <p>10 Grand Avenue, Bay Shore, New York, do you see</p> <p>11 that?</p> <p>12 A. Yes, I do.</p> <p>13 Q. And is that your address?</p> <p>14 A. The address is incorrect.</p> <p>15 Q. Incorrect?</p> <p>16 A. It should be 4 Gerard Avenue.</p> <p>17 Q. I apologize for getting that</p> <p>18 wrong, but nevertheless it was delivered to</p> <p>19 your home?</p> <p>20 A. Yes.</p> <p>21 Q. And in or about August of 2008</p> <p>22 when you received this subpoena for your</p> <p>23 deposition were you working at Ocean Beach at</p> <p>24 the time?</p> <p>25 A. Yes.</p>
Page 7	Page 9
<p>1 Cherry</p> <p>2 & Gilly, and my law firm represents the five</p> <p>3 plaintiffs in this matter against the Village</p> <p>4 of Ocean Beach and others. Thank you for</p> <p>5 coming this morning.</p> <p>6 I ask if you could mark this</p> <p>7 Cherry Exhibit 1, please, subpoena.</p> <p>8 (Cherry Exhibit 1, subpoena,</p> <p>9 marked for identification, as of this</p> <p>10 date.)</p> <p>11 Q. I have placed in front of</p> <p>12 Mr. Cherry what has now been marked as Cherry</p> <p>13 1. It is a two-page exhibit and it is a</p> <p>14 subpoena that is signed by me dated August 14,</p> <p>15 2008.</p> <p>16 Mr. Cherry, do you recognize the</p> <p>17 document that has been marked as Cherry</p> <p>18 Exhibit 1?</p> <p>19 A. Yes, I do.</p> <p>20 Q. What is this document?</p> <p>21 A. It is a subpoena to appear here</p> <p>22 for -- to give testimony.</p> <p>23 Q. Do you recall receiving the</p> <p>24 subpoena in or around August of 2008?</p> <p>25 A. Yes. It was delivered to my wife</p>	<p>1 Cherry</p> <p>2 Q. What was your title at that time?</p> <p>3 A. Dispatcher.</p> <p>4 Q. And in or around August of 2008</p> <p>5 were you a -- was that your position</p> <p>6 full-time?</p> <p>7 A. I was seasonal.</p> <p>8 Q. Seasonal?</p> <p>9 A. Yes.</p> <p>10 Q. What do you mean by seasonal?</p> <p>11 A. I worked from two weeks before</p> <p>12 Memorial Day to two weeks after Labor Day.</p> <p>13 Q. So now that we are beyond two</p> <p>14 weeks after Labor Day of 2008 are you</p> <p>15 currently working at Ocean Beach?</p> <p>16 A. No.</p> <p>17 Q. So you are not employed by Ocean</p> <p>18 Beach right now?</p> <p>19 A. I am employed -- I am still</p> <p>20 employed, I am what they classified as on</p> <p>21 call, that means if they call me I go into</p> <p>22 work.</p> <p>23 Q. When you say they classify you,</p> <p>24 who are you referring to?</p> <p>25 A. The Village.</p>

3 (Pages 6 to 9)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 4 of 122

<p style="text-align: right;">Page 10</p> <p>1 Cherry 2 Q. The Village classifies as you on 3 call? 4 A. Yes. 5 Q. Do you know whether that is a 6 civil service title? 7 A. I believe it is. 8 Q. And what is that exact title? 9 A. On call status. 10 Q. On call dispatcher or just on call 11 status? 12 MR. NOVIKOFF: Objection. You can 13 answer. Just so you know unless I 14 instruct you not to answer a question you 15 are to answer every question regardless 16 of whether I object or not. 17 A. Okay. On call I believe is if 18 they call me in to go to work, I could go to 19 work. 20 Q. And I believe the question was 21 whether the title is on call status or on call 22 dispatcher? 23 A. On call dispatcher. 24 Q. Just so I am clear, it is your 25 understanding that that is a civil service</p>	<p style="text-align: right;">Page 12</p> <p>1 Cherry 2 that? 3 A. Yes. 4 Q. And in the section that asked why 5 you are no longer employed or what the reason 6 was that you left Ocean Beach in those forms, 7 do you recall what box you checked off? 8 A. Lack of work. 9 Q. Did you alert the unemployment 10 insurance board that you were on on call 11 status? 12 A. Yes, I did. 13 Q. How long have you lived at 4 14 Gerard? 15 A. Gerard. 16 Q. How long have you lived at 4 17 Gerard Avenue? 18 A. Since 1976. 19 Q. Since 1976 have you used any other 20 address as your home address? 21 A. No. 22 Q. Have you ever used any address in 23 the Village of Ocean Beach as your home 24 address? 25 A. No.</p>
<p style="text-align: right;">Page 11</p> <p>1 Cherry 2 title, on call dispatcher? 3 MR. NOVIKOFF: Objection. 4 A. I believe so. 5 Q. Since after two weeks -- since the 6 period that ended the season in '08, which I 7 believe you testified was two weeks after 8 Labor Day; is that correct? 9 A. It may have been two and a half, 10 three weeks. 11 Q. So now I am talking about the 12 period between the end of the season for '08 13 and today how many shifts have you worked? 14 A. None. 15 Q. So you have not been called at 16 all? 17 A. No. 18 Q. Have you been paid at all from 19 Ocean Beach between -- I am talking about the 20 period the end of the season '08 until today? 21 A. No. 22 Q. Are you receiving unemployment 23 insurance benefits currently? 24 A. Yes. 25 Q. Did you file forms to receive</p>	<p style="text-align: right;">Page 13</p> <p>1 Cherry 2 Q. Have you ever testified under oath 3 before? 4 A. Yes. 5 Q. Have you ever testified under oath 6 in a civil proceeding? 7 A. No. 8 Q. So this is your first time? 9 A. Yes. 10 Q. Never testified in a deposition 11 before? 12 A. No. 13 Q. Since this is your first time I 14 want to go over a few ground rules so we are 15 on the same page today, is that fair? 16 A. Yes. 17 Q. You understand that you are 18 testifying under oath, you are sworn to tell 19 the truth? 20 A. Yes. 21 Q. That if you fail to tell the truth 22 it potentially is punishable as a criminal 23 offense, do you understand that? 24 MR. NOVIKOFF: Objection. 25 A. Yes.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 5 of 122

<p style="text-align: right;">Page 14</p> <p>1 Cherry 2 Q. It is important that you give 3 verbal answers because as you can see there is 4 a court reporter sitting next to both of us 5 and he needs to take down a record and he 6 doesn't -- it is not good if he records your 7 answer as a nod of the head or shake of the 8 head. 9 A. Yes. 10 Q. Do you understand that? 11 A. Yes. 12 Q. If you don't hear or understand a 13 question that I ask just ask me to repeat or 14 rephrase it, I will be happy to do so, okay? 15 A. Yes. 16 Q. And if you don't hear or 17 understand a phrase or word that I use, again 18 let me know, I will be happy to repeat or 19 rephrase it? 20 A. Yes. 21 Q. When you answer a question I am 22 going to assume that you both heard the 23 question and that you understood it, okay? 24 A. Yes. 25 Q. If at any point in time you want</p>	<p style="text-align: right;">Page 16</p> <p>1 Cherry 2 medications that you believe would impair your 3 ability to testify today? 4 A. No. 5 Q. Have you consumed any controlled 6 substance, drugs or narcotics in the last 72 7 hours? 8 A. No. 9 Q. Have you consumed any alcoholic 10 beverages in the last 72 hours? 11 A. Yes, I had a small glass of sherry 12 last night. 13 MR. NOVIKOFF: Yes or no. 14 Q. Is there anything about your 15 consumption of that glass of sherry that would 16 impair your ability to testify today? 17 A. No. 18 Q. Great. Is there any reason that 19 you can think of that would possibly impair 20 your ability to testify fully and truthfully 21 today? 22 A. No. 23 Q. And you are represented by an 24 attorney in connection with this deposition? 25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 Cherry 2 to correct an answer in this deposition feel 3 free to do so, okay? 4 A. Yes. 5 MR. NOVIKOFF: Note my objection. 6 We know what he is entitled to do at the 7 conclusion of the deposition. 8 Q. Again the fact that there is a 9 court reporter here it is important that you 10 let me finish my questions, the same way that 11 it is important that I let you finish your 12 answer so we get a clear transcript, okay? 13 A. Yes. 14 Q. If at any point in time you need 15 to take a break or recess, just let me 16 know, okay? 17 A. Yes. 18 Q. The only thing that I ask is if 19 there is a question pending, that unless there 20 is an issue between you and counsel with 21 respect to privilege, that you answer the 22 question and then we take our break, is that 23 fair? 24 A. Yes. 25 Q. Are you presently taking any</p>	<p style="text-align: right;">Page 17</p> <p>1 Cherry 2 Q. Who is that? 3 A. Rivkin Radler, Mr. Novikoff. 4 Q. And Mr. Novikoff is sitting right 5 next to you; correct? 6 A. Yes. 7 Q. When did you first learn that the 8 plaintiffs in this matter were making 9 allegations against Ocean Beach and others? 10 MR. NOVIKOFF: Objection. 11 A. I believe it was in the papers. 12 Q. That was the first time that you 13 heard about the fact that the plaintiffs were 14 making some allegations in this case? 15 A. Yes. 16 MR. NOVIKOFF: Note my objection. 17 Q. What is your understanding of the 18 allegations that are being made in this case? 19 A. I believe that they were let go 20 unfairly, that they had certain allegations of 21 wrongdoing in Ocean Beach. 22 Q. Anything else? 23 A. That is as far as I know. 24 Q. What is your understanding of the 25 allegations that are being made of wrongdoing?</p>

5 (Pages 14 to 17)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 6 of 122

<p style="text-align: right;">Page 18</p> <p>1 Cherry</p> <p>2 A. I believe it was drinking on duty.</p> <p>3 Having sex on duty by certain members. There</p> <p>4 was allegation that there was a cover-up of a</p> <p>5 brutality incident.</p> <p>6 Q. Any others?</p> <p>7 A. Uncertified officers working on</p> <p>8 the beach, on Ocean Beach.</p> <p>9 Q. Anything else?</p> <p>10 A. That is I guess about it. As far</p> <p>11 as I know.</p> <p>12 Q. We will get into some detail on</p> <p>13 those allegations a little bit later. What is</p> <p>14 your understanding of the allegation that they</p> <p>15 were let go unfairly?</p> <p>16 A. I don't know what their rationale</p> <p>17 was other than they felt that they were let go</p> <p>18 unfairly.</p> <p>19 Q. Have you read a copy of the</p> <p>20 complaint in this matter?</p> <p>21 A. Part of it, not all of it.</p> <p>22 Q. When did you read that complaint?</p> <p>23 A. Pardon me?</p> <p>24 Q. When did you read those parts of</p> <p>25 the complaint?</p>	<p style="text-align: right;">Page 20</p> <p>1 Cherry</p> <p>2 given a title of chief to your understanding?</p> <p>3 A. No. Chief is deputy chief I</p> <p>4 believe, but we call deputy chief chiefs, that</p> <p>5 is what we call them.</p> <p>6 MR. NOVIKOFF: Just answer the</p> <p>7 question.</p> <p>8 Q. Do you know whether Mr. Hesse or</p> <p>9 Deputy Chief Hesse ever passed the civil</p> <p>10 service test required to achieve the position</p> <p>11 of deputy chief?</p> <p>12 A. No.</p> <p>13 Q. You don't know or he didn't pass?</p> <p>14 MR. NOVIKOFF: The question was do</p> <p>15 you know. So the answer is no.</p> <p>16 A. That is correct.</p> <p>17 Q. So you don't know one way or the</p> <p>18 other?</p> <p>19 A. No.</p> <p>20 Q. Did you ever speak to Hesse about</p> <p>21 whether he passed the tests necessary to</p> <p>22 achieve the position of deputy chief?</p> <p>23 A. Yes. Well --</p> <p>24 MR. NOVIKOFF: Note my objection,</p> <p>25 you can answer.</p>
<p style="text-align: right;">Page 19</p> <p>1 Cherry</p> <p>2 A. When they got served I asked if I</p> <p>3 could read the part -- I read the part that</p> <p>4 pertains to me as far as the alleged cover-up</p> <p>5 of the police brutality during the Halloween</p> <p>6 incident.</p> <p>7 Q. When you say they got served, who</p> <p>8 are you referring to?</p> <p>9 A. The Village of Ocean Beach.</p> <p>10 Q. How did you learn that they were</p> <p>11 served?</p> <p>12 A. There was a lawsuit, I knew they</p> <p>13 got served. I asked when they get served</p> <p>14 could I read the charges.</p> <p>15 Q. Who did you ask?</p> <p>16 A. Chief Hesse.</p> <p>17 Q. You referred to Mr. Hesse as Chief</p> <p>18 Hesse, first name is George; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. How long have you referred to him</p> <p>21 as Chief Hesse?</p> <p>22 A. He was given the title of deputy</p> <p>23 chief sometime I guess in -- probably around</p> <p>24 2006.</p> <p>25 Q. Was there a point where he was</p>	<p style="text-align: right;">Page 21</p> <p>1 Cherry</p> <p>2 A. We talked about the -- I know he</p> <p>3 was appointed deputy chief. I am not aware</p> <p>4 that he passed any test or took any tests to</p> <p>5 be deputy chief.</p> <p>6 Q. Did you ever ask him whether he</p> <p>7 passed any tests or took any tests to become</p> <p>8 deputy chief?</p> <p>9 MR. NOVIKOFF: Objection.</p> <p>10 A. No.</p> <p>11 MR. NOVIKOFF: Mr. Cherry, you</p> <p>12 need to let Mr. Goodstadt finish the</p> <p>13 question and then you can answer.</p> <p>14 Q. Do you know whether there is any</p> <p>15 test or tests that are administered by Suffolk</p> <p>16 County Civil Service that are required to be</p> <p>17 passed before becoming deputy chief of a</p> <p>18 police department?</p> <p>19 MR. NOVIKOFF: Objection.</p> <p>20 A. I know there is a civil service</p> <p>21 test for a chief for the village or town or</p> <p>22 department.</p> <p>23 Q. What was Mr. Hesse's title to your</p> <p>24 understanding directly before he was appointed</p> <p>25 deputy chief?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 7 of 122

<p style="text-align: center;">Page 22</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 A. He was sergeant. 4 Q. You referred to him as Sergeant 5 Hesse? 6 A. Yes. 7 Q. Was that a title that everybody in 8 the department referred to him as? 9 MR. NOVIKOFF: Objection. 10 A. Yes. 11 Q. How about people outside the 12 department, do you know whether people outside 13 the department referred to him as Sergeant 14 Hesse? 15 MR. NOVIKOFF: Objection. 16 A. Yes. 17 Q. They did? 18 A. Yes. 19 Q. How about outside the Village of 20 Ocean Beach, do you know whether anybody 21 referred to him as Sergeant Hesse? 22 MR. NOVIKOFF: Objection. 23 A. I don't know. 24 Q. I believe that you testified that 25 you asked Sergeant Hesse or Chief Hesse for a</p>	<p style="text-align: center;">Page 24</p> <p>1 Cherry 2 Q. Do you recall when that was? 3 A. No. The exact date I don't 4 remember. 5 Q. Do you know approximately? 6 A. It was after they received it, I 7 am not sure exactly when, but it was after 8 they received a copy of the allegations. The 9 affidavit. 10 Q. Were you working on the day that 11 Mr. Hesse handed you a copy of the complaint? 12 A. Yes. 13 Q. So it was during the season that 14 you received it? 15 A. Yes. 16 Q. What was your reaction to the 17 parts of the complaint that you read? 18 A. I was dumbfounded. 19 Q. Why? 20 A. They made allegation that we 21 conspired to give false testimony as regards 22 to their Halloween incident, and the 23 investigation that Chief Hesse conducted and I 24 assisted him on. 25 Q. Just so I understand, Halloween</p>
<p style="text-align: center;">Page 23</p> <p>1 Cherry 2 copy of the complaint when you learn that they 3 were served; is that correct? 4 A. Yes. 5 Q. He gave you a copy of the 6 complaint? 7 A. I asked to see it when it came in, 8 see what -- when he got served I asked if I 9 could look at the allegations. 10 Q. Did he give you a copy of the 11 complaint? 12 A. He gave me a copy to read, I 13 didn't keep it. 14 Q. But he, Chief Hesse is the one who 15 furnished you, actually handed you a copy of 16 it? 17 A. Yes. 18 Q. He handed you a hard copy of it? 19 A. Paper, yes. 20 Q. It was not E-mailed or faxed, 21 handed to you in a hard copy? 22 A. Yes. 23 Q. Where were you when he gave you 24 that? 25 A. In the station house.</p>	<p style="text-align: center;">Page 25</p> <p>1 Cherry 2 incident, Chief Hesse is the one who conducted 3 the investigation? 4 A. That is correct. 5 Q. And you were assisting him on it? 6 A. Yes. 7 Q. We will get to the investigation 8 later on. But did you have any special title 9 with respect to your investigation? 10 A. No. 11 Q. You don't recall ever being 12 appointed as a special investigator? 13 A. No. 14 Q. Your investigation or your role in 15 the investigation, was that part of your 16 duties as a police officer in Ocean Beach? 17 A. The sergeant asked me if I could 18 assist him and I said I would, and I assisted 19 him. 20 Q. What was your title at the time of 21 the investigation into the Halloween incident? 22 A. Police officer. 23 Q. For the Village of Ocean Beach? 24 A. That is correct. 25 Q. At the time that you received and</p>

7 (Pages 22 to 25)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 8 of 122

<p style="text-align: center;">Page 26</p> <p>1 Cherry 2 read at least parts of the complaint did you 3 speak with George Hesse about the allegations 4 that were made therein?</p> <p>5 A. Other than saying, you know, gave 6 my opinion, I can understand -- that I 7 couldn't understand why they thought we 8 conducted a cover-up of the alleged brutality 9 by one of the other officers.</p> <p>10 Q. Do you recall exactly what you 11 said to him?</p> <p>12 A. Not the exact words, no.</p> <p>13 Q. So in sum and substance you recall 14 just telling him that you don't understand why 15 there is an allegation of a cover-up?</p> <p>16 A. That is correct.</p> <p>17 Q. Do you recall what his response to 18 that was?</p> <p>19 A. He said you are right, I don't 20 know why either.</p> <p>21 Q. Again we will get into that in a 22 little bit, more detail later on.</p> <p>23 At the time that you received and 24 read at least portions of the complaint did 25 you speak with any other person who was</p>	<p style="text-align: center;">Page 28</p> <p>1 Cherry 2 Loeffler about the allegations that were made 3 in the complaint?</p> <p>4 A. I believe he came into the station 5 house and I mentioned it to him, again 6 expressing my disbelief in why they would 7 accuse us of doing something like that.</p> <p>8 Q. When was that conversation?</p> <p>9 A. It was sometime after receiving 10 the complaint, I don't know the exact date. 11 But it was during the season because I was 12 working.</p> <p>13 Q. Do you recall which season it was 14 during?</p> <p>15 A. I am not sure -- I guess -- I 16 don't know exactly when the complaint was 17 received so I am not quite sure that I can 18 give you a definite answer on when that was or 19 what season it was.</p> <p>20 Q. Was it this past season?</p> <p>21 A. I am not sure it was early this 22 season or the year before.</p> <p>23 Q. Was Joe Loeffler the mayor of the 24 Village of Ocean Beach at that time?</p> <p>25 A. When I spoke to him he was the</p>
<p style="text-align: center;">Page 27</p> <p>1 Cherry 2 employed by the Village of Ocean Beach about 3 those allegations?</p> <p>4 A. I may have mentioned it to one or 5 two other officers, you know, expressed my 6 disbelief about it.</p> <p>7 Q. Which officers?</p> <p>8 A. I don't recall. I am not sure.</p> <p>9 Q. Is there anything that you can 10 think of that would refresh your recollection 11 as to who you spoke with?</p> <p>12 A. No.</p> <p>13 Q. Did you ever speak with Joseph 14 Loeffler?</p> <p>15 A. No.</p> <p>16 Q. About the allegations?</p> <p>17 A. Yes, I did.</p> <p>18 MR. NOVIKOFF: You have to wait 19 until Mr. Goodstadt finishes the 20 question.</p> <p>21 Q. Was that about the time that you 22 received and read the complaint or some 23 subsequent time?</p> <p>24 A. Sometime after that.</p> <p>25 Q. When did you speak with Joe</p>	<p style="text-align: center;">Page 29</p> <p>1 Cherry 2 mayor.</p> <p>3 Q. Did he come to the station 4 specifically to discuss the complaint?</p> <p>5 MR. NOVIKOFF: Objection.</p> <p>6 A. No.</p> <p>7 MR. NOVIKOFF: Give me time to 8 object.</p> <p>9 Q. How long did your conversation 10 last with Mr. Loeffler regarding the 11 allegations in the complaint?</p> <p>12 A. No more than a few minutes.</p> <p>13 Q. Who else was present?</p> <p>14 A. I don't recall.</p> <p>15 Q. Were there other officers present?</p> <p>16 A. I don't believe so.</p> <p>17 Q. What was your title at the time?</p> <p>18 A. Dispatcher.</p> <p>19 Q. What was Mr. Loeffler's reaction 20 to your statement to him?</p> <p>21 MR. NOVIKOFF: Objection.</p> <p>22 A. He said that is their complaint, 23 they made the allegation. He said I don't 24 believe it either. I don't remember his exact 25 words, but he said I don't believe it either,</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 9 of 122

<p>1 Cherry 2 why they would make such a complaint. 3 Q. Did you discuss anything else with 4 Mr. Loeffler during that conversation? 5 A. No. 6 Q. Did you take any notes of the 7 conversation? 8 A. No. 9 Q. Do you know whether took any notes 10 of the conversation? 11 A. No. 12 Q. Other than for that one 13 conversation in the police station with Mr. 14 Loeffler have you discussed with him on any 15 other occasion the allegations that were made 16 in the complaint? 17 A. Not the allegations, no. 18 Q. How about the fact that the 19 plaintiffs have filed a complaint? 20 A. No. 21 Q. Have you discussed anything else 22 with respect to the complaint with Mr. 23 Loeffler subsequent to that one conversation 24 that you testified to? 25 A. Other than that we might be called</p>	<p>1 Cherry 2 A. Nothing, just that we may be 3 called in to give a deposition, that was the 4 extent of it. To make us aware that we may be 5 called in. 6 Q. Again you used the word us, to 7 make us aware? 8 A. Myself. 9 Q. Where were you when this 10 conversation happened? 11 A. At the station house. 12 Q. Were you working at the time? 13 A. Yes. 14 Q. Did you have a response to Mr. 15 Loeffler when he told you that you may have to 16 be called in for a deposition? 17 A. Other than saying okay, I will 18 give the information, but there was no other 19 response. 20 Q. Was that discussion before or 21 after you received the subpoena that is marked 22 as Exhibit 1? 23 A. Before. 24 Q. You don't recall which season that 25 conversation happened in?</p>
<p>Page 31</p> <p>1 Cherry 2 in for a deposition at some point, that was 3 the extent of the conversations. 4 Q. When was that conversation? 5 A. That was again after I -- after we 6 got the complaint and there is a process going 7 along, he advised us that we might be called 8 in for a deposition. 9 Q. When you say he advised us -- 10 A. He advised me, myself. 11 Q. Was there anybody else there when 12 he advised you? 13 A. I don't know, I don't remember. 14 Q. Do you have an approximate 15 timeframe of when that happened? 16 A. Sometime after we got the 17 complaint, that is all I can say, before the 18 depositions began. 19 Q. Before all the depositions began 20 in this case? 21 A. Yes. 22 Q. Other than for advising that you 23 may have to be called in for a deposition, 24 what else did Mr. Loeffler say to you during 25 that conversation?</p>	<p>Page 33</p> <p>1 Cherry 2 A. No. 3 Q. But it was during the season? 4 A. Yes. 5 Q. Did you work any shifts between 6 the end of the '07 season and the beginning of 7 the '08 season? 8 A. No. 9 Q. Have you ever spoken to Gary 10 Bossetti about the complaint or any of the 11 allegations raised in the complaint? 12 A. Yes. 13 Q. When did that conversation happen? 14 A. Again I said, he said the 15 complaint was made that there was a cover-up, 16 I said again just expressing my disbelief or 17 my understanding of why the complaint was 18 made. 19 MR. NOVIKOFF: The question was 20 when? 21 THE WITNESS: When? 22 MR. NOVIKOFF: Yes. 23 Q. When was that conversation? 24 A. Again after the complaint was 25 received.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 10 of 122

<p>1 Cherry</p> <p>2 Q. Do you recall how long after the 3 complaint was received that you had that 4 conversation?</p> <p>5 A. It was probably wasn't too long 6 after, I don't know the exact timeframe.</p> <p>7 Q. And who else was present during 8 that conversation?</p> <p>9 A. I don't recall, probably just me 10 and Gary.</p> <p>11 Q. Where were you located when that 12 conversation was happening?</p> <p>13 A. At the station.</p> <p>14 Q. That was a face-to-face 15 conversation?</p> <p>16 A. Pardon me?</p> <p>17 Q. A face-to-face conversation?</p> <p>18 A. Yes.</p> <p>19 Q. How long did that conversation 20 last?</p> <p>21 A. Again a matter of minutes.</p> <p>22 Q. Do you recall what he said about 23 the complaint or any of the allegations in the 24 complaint?</p> <p>25 A. He expressed disbelief also, that</p>	<p>Page 34</p> <p>1 Cherry</p> <p>2 Q. Did you take any notes of that 3 conversation?</p> <p>4 A. No.</p> <p>5 Q. Did you ever discuss the complaint 6 or anything, or any allegations alleged in the 7 complaint with Richard Bossetti?</p> <p>8 A. Again other than that -- again 9 expressing the -- my one questioning why they 10 would make such an allegation. Basically the 11 same thing.</p> <p>12 MR. NOVIKOFF: Finish your answer.</p> <p>13 A. Basically the same thing, we 14 just -- I didn't understand why they were 15 making that allegation. What they based it 16 on.</p> <p>17 MR. NOVIKOFF: Yes or no.</p> <p>18 Q. When did that conversation with 19 Richard Bossetti take place?</p> <p>20 A. Again after we received the 21 complaint. I am not sure of the exact time.</p> <p>22 Q. Was it days, weeks, months, years?</p> <p>23 A. Within months probably. We worked 24 at the same time so I probably ran into him.</p> <p>25 Q. So it likely was the same season</p>
<p>Page 35</p> <p>1 Cherry</p> <p>2 was about it.</p> <p>3 Q. Did you discuss anything beyond 4 the cover-up?</p> <p>5 A. What do you mean by cover-up?</p> <p>6 Q. I believe you testified that --</p> <p>7 A. The alleged cover-up.</p> <p>8 Q. Yes, the alleged cover-up?</p> <p>9 A. No.</p> <p>10 Q. Did you discuss anything beyond 11 the alleged cover-up?</p> <p>12 A. No.</p> <p>13 Q. Did you discuss any of the 14 allegations of -- I believe you said 15 wrongdoing, you listed a bunch of them. Did 16 you discuss any of those allegations with Gary 17 Bossetti?</p> <p>18 MR. NOVIKOFF: Objection.</p> <p>19 A. No.</p> <p>20 Q. Have you had any other 21 conversations with Gary Bossetti about the 22 complaint or anything in the complaint other 23 than the one conversation you already 24 testified to?</p> <p>25 A. No.</p>	<p>Page 37</p> <p>1 Cherry</p> <p>2 that the complaint was filed and served?</p> <p>3 A. Yes, after it was served.</p> <p>4 Q. So if I represent to you that that 5 was the 2007 season, is it your testimony that 6 you didn't discuss the complaint or any 7 allegations in the complaint with either Gary 8 Bossetti or Richard Bossetti during the 2008 9 season?</p> <p>10 MR. NOVIKOFF: Objection. You can 11 answer.</p> <p>12 A. I am not sure it was the 2007 13 season. I don't believe I had any other 14 further discussions.</p> <p>15 Q. I am representing to you that the 16 complaint was filed and served, it would have 17 been the 2007 season?</p> <p>18 A. Okay.</p> <p>19 Q. Let's use that as an assumption?</p> <p>20 A. Okay.</p> <p>21 Q. Now you testified that it was 22 within weeks that you had these conversations. 23 So it was in the 2007 season; correct?</p> <p>24 A. Uh-hum.</p> <p>25 Q. My question to you is did you have</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 11 of 122

<p style="text-align: right;">Page 38</p> <p>1 Cherry</p> <p>2 any conversations with either Richard or Gary</p> <p>3 Bossetti during the 2008 season with respect</p> <p>4 to the complaint or any of the allegations in</p> <p>5 the complaint?</p> <p>6 A. I don't have any recollection of</p> <p>7 talking to them this past season.</p> <p>8 Q. Did you ever discuss with them</p> <p>9 that you may be called in for a deposition?</p> <p>10 A. No.</p> <p>11 Q. What was -- what did Richard</p> <p>12 Bossetti say during that conversation that you</p> <p>13 testified to?</p> <p>14 A. Again the same thing, it was -- I</p> <p>15 said I don't understand where they are</p> <p>16 getting these -- you know, what is this based</p> <p>17 on, what is the -- where do they come up with</p> <p>18 this allegation, and he agreed there is no</p> <p>19 basis for the allegations.</p> <p>20 Q. Did you recall anything else that</p> <p>21 he may have said during that conversation?</p> <p>22 A. No. As I said just basically</p> <p>23 disbelief in the allegations that were made.</p> <p>24 Q. How long did that conversation</p> <p>25 last?</p>	<p style="text-align: right;">Page 40</p> <p>1 Cherry</p> <p>2 in the case?</p> <p>3 A. Yes.</p> <p>4 Q. Who are they?</p> <p>5 A. Frank Fiorilli, Tom Snyder, Ed</p> <p>6 Carter, Mr. Nofi.</p> <p>7 Q. Joseph Nofi?</p> <p>8 A. Yes. And there is one other, Ed</p> <p>9 Carter. Is that five; that is five.</p> <p>10 Q. I think you said Mr. Carter twice?</p> <p>11 A. I can't think of who the fifth</p> <p>12 person is. Mr. Lamm.</p> <p>13 Q. That is Kevin Lamm?</p> <p>14 A. Yes.</p> <p>15 Q. Have you discussed the allegations</p> <p>16 made in the complaint or the complaint with</p> <p>17 any residents of the Village of Ocean Beach?</p> <p>18 A. No.</p> <p>19 Q. Have you discussed the complaint</p> <p>20 or any allegations of the complaint with</p> <p>21 anybody else, other than for counsel and any</p> <p>22 of the people that you have testified to thus</p> <p>23 far?</p> <p>24 A. No.</p> <p>25 Q. Mr. Cherry, do you have a son who</p>
<p style="text-align: right;">Page 39</p> <p>1 Cherry</p> <p>2 A. Matter of a couple of minutes.</p> <p>3 Two or three minutes maybe.</p> <p>4 Q. Did you take any notes of that</p> <p>5 conversation?</p> <p>6 A. No.</p> <p>7 Q. Do you know whether he did?</p> <p>8 A. No, sir.</p> <p>9 Q. Have you ever spoken with Edward</p> <p>10 Paradiso about the complaint or any of the</p> <p>11 allegations in the complaint?</p> <p>12 A. No.</p> <p>13 Q. Have you ever spoken with Natalie</p> <p>14 Rogers about the complaint or any of the</p> <p>15 allegations that were made in the complaint?</p> <p>16 A. No.</p> <p>17 Q. Did you ever speak with Tyree</p> <p>18 Bacon about the complaint or any allegations</p> <p>19 made in the complaints?</p> <p>20 A. No.</p> <p>21 Q. Have you ever spoken with any of</p> <p>22 the plaintiffs about the complaint or any of</p> <p>23 the allegations made in the complaint?</p> <p>24 A. No.</p> <p>25 Q. Do you know who the plaintiffs are</p>	<p style="text-align: right;">Page 41</p> <p>1 Cherry</p> <p>2 is either currently or was formerly employed</p> <p>3 with the Village of Ocean Beach?</p> <p>4 A. Yes.</p> <p>5 Q. What was your son's name?</p> <p>6 A. Patrick Cherry, C-H-E-R-R-Y.</p> <p>7 Q. What position was he employed --</p> <p>8 strike that.</p> <p>9 What was his position when he was</p> <p>10 employed by the Village of Ocean Beach?</p> <p>11 A. He was a dock master.</p> <p>12 Q. Was he ever a police officer?</p> <p>13 A. No.</p> <p>14 Q. Has he ever graduated the Police</p> <p>15 Academy?</p> <p>16 A. Yes. When you say --</p> <p>17 Q. A police officer within the</p> <p>18 Village of Ocean Beach?</p> <p>19 A. No.</p> <p>20 Q. Has he ever been a police officer</p> <p>21 anywhere?</p> <p>22 A. Yes.</p> <p>23 Q. Where was he a police officer?</p> <p>24 A. He is a police officer in the New</p> <p>25 York City Police department.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 12 of 122

<p style="text-align: right;">Page 42</p> <p>1 Cherry 2 Q. Currently? 3 A. Yes. 4 Q. Does he still work for the Village 5 of Ocean Beach? 6 A. No. 7 Q. When did he stop working for the 8 Village of Ocean Beach? 9 A. I am not sure of the exact date. 10 Q. Do you know what year it was? 11 A. No. 12 Q. At the time that he was working 13 for the Village of Ocean Beach had he already 14 graduated the Police Academy? 15 A. No. 16 Q. So he stopped working at the 17 Village of Ocean Beach and then graduated the 18 Police Academy? 19 A. Yes. 20 Q. Was his title at all times at 21 Ocean Beach dock master? 22 A. I believe so, yes. 23 Q. Never held the title of police 24 officer at Ocean Beach? 25 A. No.</p>	<p style="text-align: right;">Page 44</p> <p>1 Cherry 2 relationship outside of his duties with the 3 Village of Ocean Beach with Chief Paradiso? 4 A. No. 5 Q. Have you ever been convicted of a 6 crime? 7 A. No, sir. 8 Q. I believe you testified that your 9 wife received a subpoena, so I am assuming 10 that you are married; is that correct? 11 A. Yes. 12 Q. And how many children do you have? 13 A. Three. 14 Q. So there is Patrick -- just tell 15 me the names and ages of the other children? 16 A. I have a daughter Nora, she is 30, 17 and a daughter Deidre, D-E-I-D-R-E, and she is 18 26. 19 Q. Has Nora ever been employed by the 20 Village of Ocean Beach? 21 A. No. 22 Q. Has Nora ever been employed by 23 Suffolk County? 24 A. No. 25 Q. Has Deidre ever been employed by</p>
<p style="text-align: right;">Page 43</p> <p>1 Cherry 2 Q. Never held the title of the 3 dispatcher at Ocean Beach? 4 A. No. Not to my knowledge. 5 Q. When your son was a dock master at 6 Ocean Beach do you know who he reported to? 7 A. I believe Chief Paradiso and 8 Sergeant Hesse. 9 Q. Did your son have a personal 10 relationship with Mr. Hesse outside of his 11 duties as a dock master for the Village of 12 Ocean Beach? 13 MR. NOVIKOFF: Objection. 14 MR. CONNOLLY: Objection. 15 A. I believe they became friends 16 having worked together at Ocean Beach. 17 Q. Did they ever travel together on 18 vacation? 19 A. I don't know. 20 Q. Do you know whether they 21 socialized outside of their duties at Ocean 22 Beach? 23 MR. NOVIKOFF: Objection. 24 A. I believe they did occasionally. 25 Q. Did your son have a social</p>	<p style="text-align: right;">Page 45</p> <p>1 Cherry 2 the Village of Ocean Beach? 3 A. No. 4 Q. Has Deidre ever been employed by 5 Suffolk County? 6 A. No. 7 Q. Other than for your wife has 8 anybody lived with you at any point in time 9 between October of 2004 and the present? 10 A. Yes. 11 Q. Who is that? 12 A. Well, other than my daughter. 13 Q. Which daughter? 14 A. Deidre. 15 Q. What dates did she live with you 16 during that period? 17 A. She has lived there all her life. 18 Did you say 2004 -- 19 Q. Well, since October 2004, which is 20 when the Halloween incident occurred I want to 21 know the people who are over 18 who have lived 22 with you other than your wife and your 23 daughter Deidre? 24 A. My daughter Nora also lived with 25 us until last year, 2007.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 13 of 122

<p style="text-align: center;">Page 46</p> <p>1 Cherry 2 Q. When we refer to the Halloween 3 incident just so that everybody is clear what 4 are you referring to? 5 A. That was a Halloween of 2004, 6 there was an incident at Houser's Bar. 7 Houser's Restaurant. It is a restaurant and 8 bar. 9 Q. You testified that there was an 10 incident happened at Houser's Bar, what was 11 that incident? 12 A. I guess the officers who were 13 working that night received a call that Gary 14 Bossetti was trying to break up a fight from 15 what I understand, and received two calls, and 16 they responded, or I believe it was Officer 17 Fiorilli, Snyder and Lamm responded, and there 18 was an allegation that Gary Bossetti had 19 assaulted a number of the people with a pool 20 cue and his fist. 21 Q. Just so we are clear, when we 22 refer to the Halloween incident, that is what 23 we are referring to? 24 A. Yes. 25 Q. Did you ever discuss the Halloween</p>	<p style="text-align: center;">Page 48</p> <p>1 Cherry 2 part of it was about this Halloween incident. 3 Q. Have you ever discussed the merits 4 of the lawsuit with your daughter Deidre? 5 MR. NOVIKOFF: Objection. 6 A. No. 7 Q. Did you ever discuss the merits of 8 the lawsuit with your daughter Nora? 9 MR. NOVIKOFF: Objection. 10 A. No. 11 Q. Have you ever discussed the 12 Halloween incident with your son Patrick? 13 A. Yes. 14 Q. When was that conversation -- 15 strike that. 16 How many times have you discussed 17 the Halloween incident with your son Patrick? 18 A. A number of times after the 19 allegations were made when I informed him I 20 got the subpoena to appear for -- to give a 21 deposition about it. 22 Q. How about at the time that you 23 were assisting Mr. Hesse in the purported 24 investigation? 25 A. I may have mentioned it, probably</p>
<p style="text-align: center;">Page 47</p> <p>1 Cherry 2 incident with your daughter Deidre? 3 A. Not directly, no. My wife and I 4 discussed the lawsuit and my daughter may have 5 overheard it, but I never really discussed it 6 with her. 7 Q. I am not asking you any 8 conversation you had with your wife. I just 9 want to know conversation you had with your 10 daughter Deidre? 11 A. My daughter Deidre was aware that 12 there was a lawsuit involved, but I never had 13 a conversation with her directly about the 14 lawsuit and or the allegations made in it. 15 But she is aware of what goes on in the house. 16 Q. Did you ever discuss the merits of 17 the lawsuit with your daughter Deidre? 18 A. No. 19 MR. NOVIKOFF: Objection. 20 Q. Did you ever discuss the Halloween 21 incident with your daughter Nora? 22 A. Directly, no. 23 Q. What do you mean by directly? 24 A. Same thing. She knew there was a 25 lawsuit involved, and it was about the -- my</p>	<p style="text-align: center;">Page 49</p> <p>1 Cherry 2 mentioned that to him. Yeah, you know, there 3 was an incident over there in conversation. 4 Q. Was he employed by the Village of 5 Ocean Beach at that time? 6 A. No. 7 Q. At the time of the Halloween 8 incident? 9 A. No, he was not. 10 Q. Why did he leave the employ of the 11 Village of Ocean Beach? 12 A. Probably went to another job, it 13 may have been the Police Department. I am not 14 sure exactly when he left and when he joined 15 the Police Department, but he left there. It 16 was a summer employment job, seasonal job, 17 probably left there to go to the Police 18 Department. 19 Q. During the time that your son was 20 a seasonal dock master, was that his title? 21 A. Yes. 22 Q. At the time that he was a seasonal 23 dock master at Village of Ocean Beach did he 24 hold any other job either during the season or 25 after the season?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 14 of 122

<p style="text-align: right;">Page 50</p> <p>1 Cherry</p> <p>2 A. I don't believe so.</p> <p>3 Q. And let's go back to the</p> <p>4 conversations that you had with your son at or</p> <p>5 around the time of the purported investigation</p> <p>6 into Halloween. Do you recall when the first</p> <p>7 time you spoke with him about the Halloween</p> <p>8 incident was?</p> <p>9 A. It was probably shortly after</p> <p>10 George asked me to assist him with looking</p> <p>11 into it.</p> <p>12 Q. When did George ask you to assist</p> <p>13 him, do you recall?</p> <p>14 A. I believe it was probably around</p> <p>15 November 1st of 2004.</p> <p>16 Q. What did you discuss with your son</p> <p>17 at that time during the first conversation</p> <p>18 with respect to the Halloween incident?</p> <p>19 A. Basically that George -- that</p> <p>20 there was an incident over at the Houser's Bar</p> <p>21 and it was alleged that Gary assaulted -- Gary</p> <p>22 Bossetti assaulted someone or a number of</p> <p>23 people over there, and that George was going</p> <p>24 to do an investigation and he asked me to</p> <p>25 assist in the investigation.</p>	<p style="text-align: right;">Page 52</p> <p>1 Cherry</p> <p>2 either of you said during that conversation?</p> <p>3 A. That is to the best of the</p> <p>4 recollection, just informing him what is going</p> <p>5 on in Ocean Beach, and George asked me to</p> <p>6 assist him.</p> <p>7 Q. Was that conversation in person,</p> <p>8 over the phone or some other means?</p> <p>9 A. Probably in person.</p> <p>10 Q. Do you recall where you were?</p> <p>11 A. At home.</p> <p>12 Q. At your home?</p> <p>13 A. Yes.</p> <p>14 Q. Was Patrick Cherry living with you</p> <p>15 at the time?</p> <p>16 A. No, but he would come over often.</p> <p>17 Q. Did he express other than telling</p> <p>18 you that Richard Bossetti was not the type</p> <p>19 that would go out and assault somebody with a</p> <p>20 pool stick, did he express any other beliefs</p> <p>21 about that incident at the time?</p> <p>22 A. No. Gary Bossetti is the person</p> <p>23 to which --</p> <p>24 Q. I see what you are saying, I</p> <p>25 apologize.</p>
<p style="text-align: right;">Page 51</p> <p>1 Cherry</p> <p>2 Q. You say it was alleged that Gary</p> <p>3 Bossetti had assaulted a number of people over</p> <p>4 the head. Who was alleging that?</p> <p>5 A. Apparently the officers who were</p> <p>6 responding to the scene filed a report in</p> <p>7 which they -- it stated that he assaulted</p> <p>8 somebody. It was assault third degree</p> <p>9 investigation.</p> <p>10 Q. Was your understanding at that</p> <p>11 time of the allegations against Mr. Bossetti,</p> <p>12 were those based on the report that you just</p> <p>13 testified to, or did you have that information</p> <p>14 from some other source?</p> <p>15 MR. NOVIKOFF: Objection.</p> <p>16 A. The report.</p> <p>17 Q. Do you recall what your son said</p> <p>18 in response to what you told him about the</p> <p>19 Halloween incident at that time?</p> <p>20 A. I just told him about it. He</p> <p>21 was -- he had the same opinion that I did.</p> <p>22 Gary was not the type of guy that would</p> <p>23 assault somebody. He said what happened, I</p> <p>24 said I don't know, we have to look into it,</p> <p>25 Q. Do you recall anything else that</p>	<p style="text-align: right;">Page 53</p> <p>1 Cherry</p> <p>2 A. No, just that this was about the</p> <p>3 extent, disbelief that Gary would do something</p> <p>4 like that with no reason.</p> <p>5 Q. Other than for that one</p> <p>6 conversation did you have any other</p> <p>7 conversations at or about the time you were</p> <p>8 assisting in the purported investigation with</p> <p>9 your son about the Halloween incident?</p> <p>10 A. Not that I know of.</p> <p>11 Q. What was the next time that you</p> <p>12 recall speaking to your son about the</p> <p>13 incident?</p> <p>14 A. Well, I don't know the exact</p> <p>15 times, but he would come out and say how is it</p> <p>16 going, what is going on with the</p> <p>17 investigation, something like that, and I</p> <p>18 would tell him what I knew at the time.</p> <p>19 Q. You would tell him -- strike that.</p> <p>20 Those conversations, those</p> <p>21 occurred while the investigation was going on?</p> <p>22 A. Well, my involvement only took</p> <p>23 a -- probably a week or so. After that it was</p> <p>24 George had completed the investigation. I</p> <p>25 assisted him in the investigation about a week</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 15 of 122

Page 54	Page 56
<p>1 Cherry 2 and then George completed the investigation. 3 So it would have to be -- he just 4 asked me what is going on with that, what is 5 going on with the investigation. I would tell 6 him what I knew at time. He showed an 7 interest in what was going on.</p> <p>8 Q. Just so I am clear now. Those 9 conversations that happened during the week 10 that you were assisting on the investigation 11 or after that?</p> <p>12 A. The first conversation took place 13 a day or two after I first started assisting. 14 As he came out, I don't recall the times he 15 came out, maybe once every couple of weeks he 16 would stop by, and I recall him inquiring 17 about what was going on over there, how is it 18 going. I would tell him what I knew.</p> <p>19 Q. So just so I am clear, sir, you 20 were disclosing what you learned from the 21 investigation to a person who was not employed 22 by the beach while the investigation was 23 pending; is that correct?</p> <p>24 MR. NOVIKOFF: Objection. 25 A. I would tell him I knew, yes.</p>	<p>1 Cherry 2 you just testified to? 3 A. Probably the outcome, after 4 Mr. Van Koot was arrested. What the outcome 5 of the investigation was.</p> <p>6 Q. Prior to the outcome of Mr. Van 7 Koot being arrested had you expressed to your 8 son your belief as to what happened that 9 night?</p> <p>10 A. Yes.</p> <p>11 Q. What was the first time that you 12 expressed to him your belief as to what had 13 happened that night?</p> <p>14 A. After we finished taking the 15 statements from a number of witnesses.</p> <p>16 Q. When was that, the first time that 17 you recall telling your son about your belief 18 of what happened that night?</p> <p>19 A. It was -- could you repeat the 20 question.</p> <p>21 Q. When, approximately what date was 22 that?</p> <p>23 A. I think I finished with my part of 24 assisting George around the 7th of November. 25 We had finished -- I had finished taking</p>
Page 55	Page 57
<p>1 Cherry 2 Q. And do you recall how many times 3 during the investigation those conversations 4 occurred on?</p> <p>5 MR. NOVIKOFF: Objection. 6 A. I don't know the exact number of 7 times.</p> <p>8 Q. More than two?</p> <p>9 A. Yes, probably. As I said he came 10 out, not every time, he would say what is new 11 at Ocean Beach and this is something -- if 12 something new developed I would mention it to 13 him. He wanted to know. As I say it was 14 casual conversation between father and son 15 having both worked over there, he would 16 inquire what was going on. Sometimes I didn't 17 know anything or I didn't tell him because 18 there was nothing to tell.</p> <p>19 Q. I am just focusing on the 20 Halloween incident, not what other things may 21 be happening at Ocean Beach?</p> <p>22 A. Right.</p> <p>23 Q. When was the time that you recall 24 speaking to him about the Halloween incident 25 after that first group of conversations that</p>	<p>1 Cherry 2 statements from the witnesses and developed a 3 sense of what happened. So sometime after 4 that I may have expressed it to my son.</p> <p>5 Q. Do you recall what you told your 6 son about what happened?</p> <p>7 A. I said I believe Gary acted in 8 defense of a third person. Was attacked by 9 the person who was assaulting a woman in the 10 hallway and two of his friends came over and 11 joined in the fray and started kicking and 12 punching Gary. I said I felt he acted in 13 defense of a third person and for self 14 defense.</p> <p>15 Q. What was that conclusions based 16 on?</p> <p>17 A. The statements that I had taken 18 from three witnesses and ones that George 19 Hesse had taken.</p> <p>20 Q. We will get into detail of those 21 statements later, but which three witnesses 22 are you referring to?</p> <p>23 A. Jeannie Jaegger, J-A-E-G-G-E-R, I 24 am not sure of the spelling, I have to check 25 the statements. Ian Levine and Sean O'Rourke.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 16 of 122

<p style="text-align: right;">Page 58</p> <p>1 Cherry 2 Q. Which witness statements were you 3 referring to that Mr. Hesse had taken? 4 A. I believe he took the statement 5 from Doug Wycoff, W-Y-C-O-F-F, I believe it 6 is. 7 Q. Any other statements? 8 A. That was all I knew of at the 9 time. 10 Q. Had you taken into account the 11 witness statements that were taken the night 12 of the incident? 13 A. Yes. 14 Q. So those are additional statements 15 that you took into account? 16 A. I knew about those statements, but 17 they didn't really give much information other 18 than that they were attacked by someone who 19 said he was a police officer. 20 Q. But when you testified that you 21 spoke to your son about what happened that 22 night, you testified that you base that on the 23 three witnesses statements that you took plus 24 Mr. Wycoff; is that correct? 25 MR. NOVIKOFF: Objection to the</p>	<p style="text-align: right;">Page 60</p> <p>1 Cherry 2 night. Do you recall what his reaction was? 3 A. Other than just listening to me he 4 didn't show any particular reaction. I mean 5 he didn't react to what I told him, you know, 6 okay. He just listened to me. 7 Q. Had you spoken to any other 8 witnesses other than for the four that you 9 listed? 10 A. No. 11 MR. NOVIKOFF: Hold it. 12 Q. At the time -- by the time that 13 you told your son what had happened? 14 MR. NOVIKOFF: Objection to the 15 question. I think he said he only took 16 three witnesses and read Hesse's. 17 Q. Have you spoken to any witnesses 18 other than for the three that you had taken? 19 A. No. 20 Q. Let me finish the question. 21 At the time that you disclosed to 22 your son what you believed happened that night 23 had you spoken to any other witnesses other 24 than Ms. Jaeger, Mr. Levine and Mr. O'Rourke? 25 A. No.</p>
<p style="text-align: right;">Page 59</p> <p>1 Cherry 2 form. You can answer. 3 Q. Is that correct? 4 A. Yes. 5 Q. So my question to you was your 6 conclusion or your belief about what happened, 7 was that based at all based on the statements 8 taken of the witnesses on Halloween night? 9 MR. NOVIKOFF: Objection. You can 10 answer. 11 A. Other than I read the three 12 statements, they didn't indicate what had 13 happened prior to them being assaulted. These 14 statements gave a bigger picture to show us 15 what happened prior to them being assaulted, 16 what they said -- what they claimed to be an 17 assault. 18 Q. So did you believe those 19 statements of those witnesses that were taken 20 on the night of the Halloween incident to be 21 incomplete? 22 A. Yes. 23 Q. I just want to go back to the 24 conversation in which you disclosed to your 25 son what you believed what happened that</p>	<p style="text-align: right;">Page 61</p> <p>1 Cherry 2 Q. Had you read any witness 3 statements other than for Mr. Wycoff and the 4 witness statements that were taken the night 5 of the Halloween incident? 6 A. Any others? 7 Q. Had you read any other witness 8 statements? 9 A. No. 10 Q. Was your belief as to what 11 happened that night based on anything else 12 other than for the seven statements that you 13 have discussed today; meaning the three that 14 you took, the one that Mr. Hesse took, and the 15 three witness statements that were taken the 16 night of the incident? 17 A. Sorry, I lost the question. Was 18 it based on anything else other than that? 19 Q. Yes. 20 A. No. 21 Q. Was your belief of what happened 22 based on anything else other than for those 23 seven witness statements and/or whatever 24 conversations you had with the witnesses that 25 you took?</p>

16 (Pages 58 to 61)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 17 of 122

Page 62	Page 64
1 Cherry	1 Cherry
2 A. That is correct, there was no	2 the time sheet.
3 other basis, no other statements that I read,	3 Q. So when you were working there
4 or no other basis for my conclusion at that	4 during those 16 to 20 hours there still was
5 time.	5 the normal police shift; you didn't replace
6 Q. And do you recall when the next	6 any other police officers that were scheduled
7 time you spoke to your son about the Halloween	7 to work those hours; is that correct?
8 incident was subsequent to the discussion	8 MR. NOVIKOFF: Objection.
9 where you disclosed to him what you believed	9 A. No, sir.
10 happened?	10 Q. I want to quickly go through your
11 A. No. Other than I think sometime I	11 educational background. What was the highest
12 probably told him that there had been an	12 level of education that you completed?
13 arrest in the case, and that I believe Mr. Van	13 A. Probably about one year of
14 Koot had been arrested and one of the other	14 college, one year's credits of college.
15 defendants, subjects had been arrested. Other	15 Q. Where was that?
16 than that it sort of ended the -- I didn't go	16 A. State University of New York
17 back to work until the following season, there	17 Farmingdale at the time.
18 was not much conversation after that.	18 Q. Did you receive any kind of degree
19 Q. And the Halloween incident, that	19 or diploma or certificate from that school?
20 was after the season; is that correct?	20 A. No.
21 A. That is correct.	21 Q. Do you have any degrees,
22 Q. So at the time that you were asked	22 certificates or diploma subsequent to that?
23 to assist Mr. Hesse you were not actively	23 A. As far as educational
24 working at the beach, were you?	24 institutions?
25 A. That is correct.	25 Q. Yes.
	Page 63
1 Cherry	Page 65
2 Q. So you specifically came to work	1 Cherry
3 at the beach to perform your duties assisting	2 A. No.
4 Mr. Hesse; is that correct?	3 Q. How about as far as any other type
5 A. That is correct.	4 of institutions?
6 Q. Were you paid for those duties?	5 A. The Police Department.
7 A. Yes.	6 Q. What certificate or diploma do you
8 Q. Were you paid your same rate that	7 have from the Police Department?
9 you were paid for being a police officer?	8 A. Well, upon completion of the
10 A. Yes.	9 Police Academy are you given a municipal
11 Q. Were you paid anything more than	10 Chiefs of Police training certificate.
12 what you were paid as a police officer?	11 Q. When did you receive that?
13 A. No.	12 A. In January of 1971.
14 Q. How many hours did you log or did	13 Q. Other than for the police training
15 you get paid for in connection with your	14 certificate do you have any other
16 investigation?	15 certificates, degrees or diplomas subsequent
17 A. I would say maybe 16, 16, 20	16 to your attendance at SUNY Farmingdale?
18 hours, I am not sure of the exact time.	17 A. I have police courses that I went
19 Q. Were you actually placed on the	18 to, a number of certificates for training
20 schedule during that period?	19 purposes, usually one or two week school.
21 A. No, I was not.	20 Q. Which certificates do you have?
22 Q. So how did you put in your request	21 A. The Drug Enforcement Agency, I
23 to be paid for those hours?	22 have two or three certificates from them for
24 A. I wasn't on the schedule. We have	23 training. The FBI Firearms Instructors
25 a time sheet that we fill out. I filled out	24 School, that was in service training at the
	25 Police Department. A number of those that are

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 18 of 122

<p style="text-align: center;">Page 66</p> <p>1 Cherry 2 given every three or four years. 3 There is probably several more, 4 but I have to look up my files to see. But 5 they were basically training schools for the 6 Police Department. Oh, The International 7 Association of Drug Diversion Investigators 8 course.</p> <p>9 Q. Any others? 10 A. Not that I can recall at this 11 time.</p> <p>12 Q. You say you have to check your 13 files. What are you referring to? 14 A. I have copies of the certificates 15 that I got.</p> <p>16 Q. Did you keep any file or files 17 with respect to your assistance in 18 investigating the Halloween incident? 19 A. No.</p> <p>20 Q. Do you have any paperwork or 21 documents in your possession that related to 22 your assistance in the Halloween incident? 23 A. I have copies of the statements 24 that I took.</p> <p>25 Q. Where do you keep those?</p>	<p style="text-align: center;">Page 68</p> <p>1 Cherry 2 A. No. That is I think all the 3 statements involved.</p> <p>4 Q. Why did you take those home to 5 your house? 6 A. Well, I learned -- I took the 7 other copies when I learned there was a 8 lawsuit just to review them.</p> <p>9 Q. So again so we are clear, you took 10 the three statements that you took? 11 A. Uh-hum.</p> <p>12 Q. Home with you in or around 13 November of 2004? 14 A. Right.</p> <p>15 Q. And then you took copies of the 16 statements that the officers took that night, 17 and those are the witness statements that you 18 are referring to? 19 A. Yes.</p> <p>20 Q. As well as a copy of the Wycoff 21 statement? 22 A. Yes.</p> <p>23 Q. And that was in or around 2007 24 when the complaint was filed? 25 A. I believe it was after we got the</p>
<p style="text-align: center;">Page 67</p> <p>1 Cherry 2 A. They are in my file drawer in my 3 house.</p> <p>4 Q. When did you take a copy of that 5 to your file drawer in your house? 6 A. I usually took them, I made a copy 7 of them after we took the statements.</p> <p>8 Q. So just so I understand, at some 9 point in early November of 2004 you made a 10 copy of the statements and took them home with 11 you? 12 A. Yes.</p> <p>13 Q. You still maintain those today? 14 A. Yes.</p> <p>15 Q. Do you have any other copies of 16 statements of the witnesses that you didn't 17 take? 18 A. Yes.</p> <p>19 Q. So which copies of the statements 20 of the witnesses that you didn't take do you 21 have? 22 A. I have got the three copies that 23 the officers took. I have got the copy that 24 George took, Mr. Wycoff.</p> <p>25 Q. Any others?</p>	<p style="text-align: center;">Page 69</p> <p>1 Cherry 2 complaint, that is when I took -- after we got 3 the complaint. So we got the complaint, I 4 don't know when I actually read it, but it was 5 after I read the complaint I made some copies 6 just to review them.</p> <p>7 Q. Did you get permission from 8 somebody to make copies and take them home? 9 A. I asked George whether I could 10 make copies and he said yes.</p> <p>11 Q. And take them home? 12 A. Yes.</p> <p>13 Q. You got permission both in '04 14 when you did it, and after you learned of the 15 lawsuit, both times you got permission from 16 him? 17 A. I don't think I asked him for 18 permission in '04, but I usually take copies 19 of the statements that I make. You see there 20 was a case file in the office that the copies 21 were maintained, but I made a copy for my 22 personal possession.</p> <p>23 MR. NOVIKOFF: Hold on. 24 (Witness confers with counsel.)</p> <p>25 Q. Just so I am clear, the copies</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 19 of 122

<p style="text-align: center;">Page 70</p> <p>1 Cherry 2 that you made for your personal possession, 3 were you authorized to take that from somebody 4 at Ocean Beach?</p> <p>5 MR. NOVIKOFF: Objection. You can 6 answer.</p> <p>7 A. Not specifically, no.</p> <p>8 Q. And the copies that you took after 9 you learned that the lawsuit had been filed, 10 were you authorized from somebody at Ocean 11 Beach to take those copies home?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 A. I asked if I could make copies of 14 them and I was told that I could.</p> <p>15 Q. Just so I am clear, I am not 16 talking about making the copies, I am talking 17 about actually taking the copies off of Ocean 18 Beach to your home?</p> <p>19 A. Okay.</p> <p>20 MR. NOVIKOFF: Note my objection.</p> <p>21 Q. Were you authorized to do that?</p> <p>22 MR. NOVIKOFF: Note my objection.</p> <p>23 A. Not specifically authorized, but 24 there was no objection to it.</p> <p>25 Q. Well, did you alert anybody at</p>	<p style="text-align: center;">Page 72</p> <p>1 Cherry 2 make copies of the statements involved.</p> <p>3 Q. Did you make copies of any other 4 documents other than for the three witnesses 5 who you took, Wycoff, and the three witnesses 6 who were the on duty officers took on the 7 night of the incident?</p> <p>8 A. No.</p> <p>9 Q. You didn't take any statements 10 that were made that were produced by the 11 officers?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 A. No.</p> <p>14 Q. You didn't take any statement that 15 was provided by either Gary Bossetti or 16 Richard Bossetti?</p> <p>17 A. No.</p> <p>18 Q. You didn't take any statements 19 that were provided by any other witnesses?</p> <p>20 A. No, sir.</p> <p>21 Q. And where did you get the 22 documents from that you took the time that you 23 learned that the complaint was filed?</p> <p>24 A. Where did I get the documents 25 from?</p>
<p style="text-align: center;">Page 71</p> <p>1 Cherry 2 Ocean Beach that you were going to take copies 3 home with you?</p> <p>4 A. Well, I asked if I could have a 5 copy of them. I assumed I was going to take 6 them home.</p> <p>7 Q. Who did you ask whether you could 8 have a copy?</p> <p>9 A. I asked George if I could --</p> <p>10 George Hesse if I could make a copy.</p> <p>11 Q. And what was his response?</p> <p>12 A. He said yes.</p> <p>13 Q. Did you tell him why you were 14 making copies of them and taking them home?</p> <p>15 A. Yes. So I could review them, I 16 know we were going to have a hearing on it.</p> <p>17 Q. Just so I am clear, this is at the 18 time that the complaint was filed you took 19 them because you knew there was going to be a 20 hearing on it?</p> <p>21 A. Well, they made a -- they made a 22 complaint involving me. I felt that I had to 23 defend myself somewhere along the line or a 24 deposition like this, I should have some 25 references to look at. So I asked if I could</p>	<p style="text-align: center;">Page 73</p> <p>1 Cherry 2 Q. Yes.</p> <p>3 A. There is a case jacket in the 4 office.</p> <p>5 Q. Where is that kept in the office?</p> <p>6 A. In a file.</p> <p>7 Q. Where is that file located?</p> <p>8 A. In the back in the office. The 9 station house.</p> <p>10 Q. Whose office is that?</p> <p>11 A. It is -- I don't know if you are 12 familiar with the -- it is -- well, it is the 13 office. There is a front desk and then there 14 is the office, everything is -- files are in 15 the office.</p> <p>16 Q. There are desks in the office?</p> <p>17 A. Yes.</p> <p>18 Q. Who has a desk in the office, or 19 who had a desk at the time?</p> <p>20 A. George has his desk there and then 21 there is about three other desks or -- one 22 other desk and then a row of -- a shelf where 23 the file drawer was under the shelf. That is 24 where the guys do their work and stuff. So it 25 is not an office per se, it is the whole</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 20 of 122

<p style="text-align: right;">Page 74</p> <p>1 Cherry 2 office. The station, just a very small 3 station. Q. Does Chief Paradiso have a desk there? 4 A. Yes, he did. Q. Does he currently have a desk there? 5 A. No, he is retired now. Q. Have you ever been a party to any lawsuit? 6 A. No. Other than this one, no. 7 MR. NOVIKOFF: Other -- 8 A. I'm sorry, no. I am thinking of 9 party, so... Q. Have there ever been any grievances filed against you either in your employment at Ocean Beach or in your employment with Nassau County? 10 A. No. Q. Have you ever been disciplined either during your employment with Ocean Beach or your employment with Nassau County? 11 A. No. Q. Have you ever threatened to sue</p>	<p style="text-align: right;">Page 76</p> <p>1 Cherry Q. What does a PBA do? 2 MR. NOVIKOFF: Objection. 3 A. They are the bargaining agent for 4 the police officers in Nassau County, and a 5 benevolent association. Q. Other than representing you, let's focus on the Nassau County PBA because that is what you are familiar with, other than representing you and the other officers who were members in collective bargaining, what else did the PBA do on your behalf? 6 A. They provided attorneys if you 7 needed one. They have a Christmas party, you 8 know, members and benefit type things. Q. Do you know how the PBA raised its funds from Nassau County? 9 A. We pay dues. Q. Do they ever have any fundraisers? 10 A. I don't believe so, no. Q. Do they ever solicit donations from anybody? 11 A. I don't think that Nassau did, to 12 my knowledge. Q. So you never took part in any kind</p>
<p style="text-align: right;">Page 75</p> <p>1 Cherry any of your employers? 2 A. No. Q. Have you ever threatened to sue any union that may have represented you? 3 A. No. Q. Have you ever been a member of a union? 4 A. Yes. Q. Which union? 5 A. The Police Benevolent Association 6 of Nassau County, and the Detectives 7 Association Incorporated of Nassau County. Q. You said the Police Benevolent Association of Nassau County, is that also known as the PBA of Nassau County? 8 A. That is correct. Q. Did Ocean Beach ever have a PBA? 9 A. Not to my knowledge. Q. So you were never a member of any police benevolent association or police benefit association? 10 A. Of Ocean Beach? Q. Of Ocean Beach? 11 A. No.</p>	<p style="text-align: right;">Page 77</p> <p>1 Cherry of drive or situation where the Nassau County PBA was trying to solicit donations? 2 MR. NOVIKOFF: Objection. 3 A. No, sir. Q. Did you ever take part in any drive or other circumstances where the Ocean Beach Police Department was soliciting donations? 4 A. No. Q. Does the Ocean Beach Police Department actively solicit donations? 5 A. I am not sure. Q. Are you aware of any time when the Ocean Beach Police Department has actively solicited donations? 6 A. I am not personally aware of it, 7 no. Q. What have you done to prepare for this deposition? 8 A. I read over the statements that I 9 took, and that is about it. Q. Just so I am clear, you only read over the ones that you took? 10 A. The package pertaining to the</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 21 of 122

<p style="text-align: right;">Page 78</p> <p>1 Cherry 2 Halloween incident. 3 Q. So the statements that you took, 4 you mean the statements that you took home 5 with you? 6 A. The statements that I took and the 7 statements that I took home with me. The ones 8 that I actually did take and the copies of the 9 statements that I took home.</p> <p>10 Q. So the statements that you took, 11 that is incorporated in the statements that 12 you took home; correct?</p> <p>13 A. Yes. That is correct.</p> <p>14 Q. Did you review any other documents 15 other than for the seven witness statements 16 that you testified that you took home?</p> <p>17 A. No.</p> <p>18 Q. Did you ever review a copy of the 19 complaint in preparation for this?</p> <p>20 A. I reread the complaint, I don't 21 have a copy of it.</p> <p>22 Q. I am talking about in preparation 23 for the deposition, did you read a copy of the 24 complaint?</p> <p>25 A. Recently?</p>	<p style="text-align: right;">Page 80</p> <p>1 Cherry 2 subject to whatever objections I have on 3 attorney/client privilege and based upon 4 our prior discussion that by allowing the 5 witness to answer that question I am not 6 waiving the objection on the basis of 7 privilege you can answer that. Is that 8 okay?</p> <p>9 MR. GOODSTADT: Agreed.</p> <p>10 A. About two hours.</p> <p>11 Q. Can was anyone present other than 12 for attorneys and you?</p> <p>13 A. No.</p> <p>14 Q. When did that two hour meeting 15 last -- when did it occur?</p> <p>16 A. Yesterday.</p> <p>17 Q. Other than for the conversation 18 with counsel did you speak with anybody else 19 in preparation for today's deposition?</p> <p>20 A. No.</p> <p>21 Q. You didn't speak with anybody at 22 Ocean Beach to prepare for the deposition?</p> <p>23 A. No.</p> <p>24 Q. When was the last time that you 25 spoke with Joseph Loeffler?</p>
<p style="text-align: right;">Page 79</p> <p>1 Cherry 2 Q. To prepare for today's deposition? 3 A. No.</p> <p>4 Q. Did you review any other documents 5 to prepare for today's deposition other than 6 for those seven witness statements?</p> <p>7 A. No.</p> <p>8 Q. Did you speak to anybody in 9 preparation for today's deposition?</p> <p>10 A. No.</p> <p>11 MR. NOVIKOFF: Other than counsel.</p> <p>12 A. Other than counsel.</p> <p>13 Q. You spoke to counsel, I don't want 14 to know what you spoke about, but you spoke to 15 counsel?</p> <p>16 A. Yes.</p> <p>17 Q. How many times did you speak to 18 counsel to prepare for the deposition?</p> <p>19 A. Once.</p> <p>20 Q. How long did that meeting last?</p> <p>21 MR. NOVIKOFF: I am going to 22 object.</p> <p>23 MR. GOODSTADT: I don't want --</p> <p>24 MR. NOVIKOFF: I will object. I 25 think the question is improper, but</p>	<p style="text-align: right;">Page 81</p> <p>1 Cherry 2 A. Probably early September after 3 Labor Day.</p> <p>4 Q. Was that during the season or 5 after the season?</p> <p>6 A. Just at the end of the season.</p> <p>7 Q. Was that after the season or 8 during the season?</p> <p>9 A. It was during the season that I 10 worked. I worked until I think the second or 11 third week in September, and I spoke to him 12 during that week, that last week.</p> <p>13 Q. Have you spoken to any, other than 14 for your son, have you spoken to any current 15 or former employee of Ocean Beach since the 16 end of the '08 season?</p> <p>17 A. I spoke to George Hesse.</p> <p>18 Q. When was the last time that you 19 spoke to George Hesse?</p> <p>20 A. Yesterday.</p> <p>21 Q. Did you discuss this case or 22 anything about this case with George Hesse 23 yesterday?</p> <p>24 A. I told him I met with the 25 attorneys and that I was going to go for the</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 22 of 122

<p style="text-align: right;">Page 82</p> <p>1 Cherry 2 deposition today. We didn't discuss any -- we 3 didn't discuss anything else other than that I 4 was going to the deposition today. Q. How long did that discussion last? 5 A. About two minutes. Q. The whole discussion lasted two minutes or just about the deposition? 6 A. Just about the whole discussion. Q. Other than for -- did you take any notes of that discussion? 7 A. No. Q. Was that over the phone or in person? 8 A. Over the phone. Q. Other than for that two minute phone call have you had any discussions with George Hesse subsequent to the end of the '08 season? 9 A. Subsequent to the end -- after the 10 '08 season? Q. After it ended have you had any other correspondence whether verbal or written with George Hesse? 11 A. Yes. I spoke to him a couple of </p>	<p style="text-align: right;">Page 84</p> <p>1 Cherry depositions? 2 A. No. Q. Did you discuss the Gilbert matter with him? 3 A. No. Q. Did you discuss anything at all about Ocean Beach with him during that conversation? 4 A. No, we try not to. 5 MR. NOVIKOFF: Just answer the 6 question. Q. Did you take any notes of your conversation with him? 7 A. No. Q. Do you know whether he took any 8 A. No, sir. Q. You don't know or -- 9 A. Not to my knowledge. Q. Prior to the coffee last Wednesday 10 or Thursday when was the time before that that you spoke with Mr. Hesse? 11 A. Probably talked to him on the 12 phone a week or two before that.</p>
<p style="text-align: right;">Page 83</p> <p>1 Cherry 2 times, we had coffee once. Q. How many times have you spoken to him other than for the two minute discussion yesterday? 3 A. Probably twice on the phone and 4 once having coffee. Q. Let's work backwards 5 chronologically from yesterday. When was the 6 time before yesterday that you spoke with Mr. 7 Hesse? 8 A. I had coffee with him I believe it 9 was last week, I am not sure what day, 10 Wednesday or Thursday of last week. Q. Where did you have coffee with 11 him? 12 A. Barnes & Noble in Bay Shore. Q. How long were the two of you 13 together? 14 A. About a half hour. Q. Did you discuss this case or any 15 allegations of this case with him at that 16 time? 17 A. No. Q. Did you tell him about </p>	<p style="text-align: right;">Page 85</p> <p>1 Cherry How long did that conversation last? 2 A. A couple of minutes. Q. Did you call him or did he call 3 you? 4 A. I called him. Q. What was the purpose of the call? 5 A. He had a court appearance and I 6 just asked him how it went. Q. Did you ask him how it went? 7 A. Yes. Q. What was his response? 8 A. He said he didn't have to appear, 9 his lawyer -- it was a conference and his 10 lawyer told him that he didn't have to appear. 11 MR. NOVIKOFF: Read back the 12 question and answer. 13 (Record read.) Q. Did he tell you anything else 14 about that conference? 15 A. No. Q. What else did you discuss with him 16 on that phone call? 17 A. That was about it. </p>

22 (Pages 82 to 85)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 23 of 122

<p style="text-align: right;">Page 86</p> <p>1 Cherry</p> <p>2 Q. How long did that phone call last?</p> <p>3 A. A minute or two at most.</p> <p>4 Q. How did you know that he had a conference that day?</p> <p>5 A. Its -- I keep track of that when</p> <p>6 he has to go. Sometimes I go to the hearing,</p> <p>7 go to the court with him.</p> <p>8 Q. How do you keep track of the court dates?</p> <p>9 A. It is listed on the Suffolk County</p> <p>10 DA's web-site, it has a link to the court</p> <p>11 calendar, and I check it occasionally.</p> <p>12 Q. Do you recall anything else that was discussed during that conversation?</p> <p>13 A. Pardon me?</p> <p>14 Q. Was anything else discussed during that conversation?</p> <p>15 A. No.</p> <p>16 Q. Prior to that conversation which was probably about three weeks ago or so what was the time before that when you spoke with Mr. Hesse?</p> <p>17 A. It was probably during working,</p> <p>18 when I was working.</p>	<p style="text-align: right;">Page 88</p> <p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 Q. Did you speak with Mr. Clemens in person or over the phone?</p> <p>4 A. Over the phone.</p> <p>5 Q. And did you call him or he called you?</p> <p>6 A. I called him.</p> <p>7 Q. Where did you call him at?</p> <p>8 A. I called him at the Ocean Beach</p> <p>9 police headquarters.</p> <p>10 Q. Why did you call him?</p> <p>11 A. To tell him that I was going to a</p> <p>12 deposition.</p> <p>13 Q. Why did you call Mr. Clemens to tell him that?</p> <p>14 A. Just to log it in just in case</p> <p>15 there was an accident or something, I was on</p> <p>16 department business. I signed on with him to</p> <p>17 let him know I was going to the deposition,</p> <p>18 and it was official department business or</p> <p>19 village business.</p> <p>20 Q. Are you being paid by the department to testify today?</p> <p>21 A. Yes.</p>
<p style="text-align: right;">Page 87</p> <p>1 Cherry</p> <p>2 Q. So subsequent to the '08 season ending do you recall speaking to him twice on the phone and once in person at the coffee?</p> <p>3 A. Yes.</p> <p>4 Q. And during any of those conversations other than what you already testified to, yesterday's conversation, did you discuss this case or anything about this case with him?</p> <p>5 A. No.</p> <p>6 Q. Other than for Mr. Hesse and your son, have you spoken with any current or former employee of Ocean Beach between the time the '08 season ended and today?</p> <p>7 A. I spoke to Hank Clemens</p> <p>8 (phnetic), I called him --</p> <p>9 MR. NOVIKOFF: The question is who</p> <p>10 did you speak with?</p> <p>11 Q. Who is Hank Clemens?</p> <p>12 A. Hank Clemens is a police officer</p> <p>13 with the Ocean Beach Police Department.</p> <p>14 Q. Is he a full-time police officer?</p> <p>15 A. Yes.</p> <p>16 Q. He works throughout the year?</p>	<p style="text-align: right;">Page 89</p> <p>1 Cherry</p> <p>2 Q. What rate are you being paid at?</p> <p>3 A. My basic rate.</p> <p>4 Q. Which is what?</p> <p>5 A. I believe it is \$19.67.</p> <p>6 MR. NOVIKOFF: So if you want to</p> <p>7 take the first seven hours.</p> <p>8 Q. Who told you that you would be paid for today's time?</p> <p>9 A. George Hesse.</p> <p>10 Q. When did he tell you that?</p> <p>11 A. I guess when I spoke to him, when</p> <p>12 I called him yesterday.</p> <p>13 Q. So that is something additional that you recall?</p> <p>14 A. Yes. Now that you mentioned it, I</p> <p>15 mentioned should I sign on, he said yes, you</p> <p>16 get paid for the day.</p> <p>17 Q. Was that the first time that you knew that you were going to get paid?</p> <p>18 A. Yes.</p> <p>19 Q. So why did you call Hank Clemens a couple of weeks ago then?</p> <p>20 MR. NOVIKOFF: Objection.</p> <p>21 A. No, I spoke to him yesterday.</p>

23 (Pages 86 to 89)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 24 of 122

<p style="text-align: right;">Page 90</p> <p>1 Cherry</p> <p>2 Q. Your discussion with Hank Clemens</p> <p>3 was yesterday?</p> <p>4 A. Yes.</p> <p>5 Q. I misunderstood you, I apologize.</p> <p>6 So you spoke to Mr. Hank Clemens after you</p> <p>7 spoke with Mr. Hesse?</p> <p>8 A. No, I spoke to Hank Clemens in the</p> <p>9 morning about roughly 9:30 before, just to let</p> <p>10 him know I was going to the prep for the</p> <p>11 deposition, and I called him when I finished</p> <p>12 up a little after 12. When we finished then I</p> <p>13 called George later, about an hour later.</p> <p>14 Q. Now that you recall this</p> <p>15 additional substance that you discussed with</p> <p>16 Mr. Hesse yesterday, is there anything else</p> <p>17 that you now recall discussing with him?</p> <p>18 MR. NOVIKOFF: Objection.</p> <p>19 A. No.</p> <p>20 Q. Were you paid for the time that</p> <p>21 you spent preparing yesterday?</p> <p>22 A. No.</p> <p>23 Q. Do you know why you get paid for</p> <p>24 today and not for the time preparing?</p> <p>25 A. Because I was subpoenaed to be</p>	<p style="text-align: right;">Page 92</p> <p>1 Cherry</p> <p>2 graduate the academy?</p> <p>3 A. I am not sure of the exact date,</p> <p>4 he has been on the police force about eight</p> <p>5 years.</p> <p>6 MR. NOVIKOFF: Eight years?</p> <p>7 THE WITNESS: Yes.</p> <p>8 Q. So at some point in or around 2000</p> <p>9 or so?</p> <p>10 A. 2000, yes.</p> <p>11 Q. After he left Ocean Beach to go to</p> <p>12 the academy did he work at all at Ocean Beach</p> <p>13 at any time from that date until today?</p> <p>14 A. No.</p> <p>15 MR. NOVIKOFF: Objection.</p> <p>16 Q. And he is currently with the New</p> <p>17 York City Police department; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. What is his title?</p> <p>20 A. Detective.</p> <p>21 Q. What precinct?</p> <p>22 A. He works out of the Firearms</p> <p>23 Investigation Division of the Organized Crime</p> <p>24 Control Bureau.</p> <p>25 Q. How long has he had that title?</p>
<p style="text-align: right;">Page 91</p> <p>1 Cherry</p> <p>2 here today, and they paid me for the day, of</p> <p>3 the deposition. I don't know why.</p> <p>4 Q. Do you know why they didn't pay</p> <p>5 you for yesterday?</p> <p>6 A. No. I have no idea.</p> <p>7 Q. And other than for logging in with</p> <p>8 Mr. Clemens for the time that you are at the</p> <p>9 deposition today what else did you discuss</p> <p>10 with him yesterday?</p> <p>11 A. That is it.</p> <p>12 Q. So now other than for Mr. Hesse,</p> <p>13 Mr. Clemens and your son have you had any</p> <p>14 conversations with any current or former</p> <p>15 employee of Ocean Beach subsequent to the end</p> <p>16 of the '08 season?</p> <p>17 A. No.</p> <p>18 MR. GOODSTADT: Let's take a</p> <p>19 break.</p> <p>20 THE VIDEOGRAPHER: The time is</p> <p>21 10:57, we are off the record.</p> <p>22 (Recess taken.)</p> <p>23 THE VIDEOGRAPHER: The time is</p> <p>24 11:12, we are back on the record.</p> <p>25 Q. Mr. Cherry, when did your son</p>	<p style="text-align: right;">Page 93</p> <p>1 Cherry</p> <p>2 A. He has been there a short time.</p> <p>3 Probably about a month.</p> <p>4 Q. Where was --</p> <p>5 A. Title detective --</p> <p>6 Q. Start with detective, how long has</p> <p>7 he been a detective?</p> <p>8 A. About two years, two and a half</p> <p>9 years.</p> <p>10 Q. How long has he been with the</p> <p>11 Firearms Investigation Unit?</p> <p>12 A. About a month.</p> <p>13 Q. Where was he before that?</p> <p>14 A. He was with Brooklyn North</p> <p>15 Narcotics.</p> <p>16 Q. How long was he there for?</p> <p>17 A. He was there about three years.</p> <p>18 Q. So he was there both prior to and</p> <p>19 after he became a detective?</p> <p>20 A. He became a -- yes, that is</p> <p>21 correct. He was a police officer, he was</p> <p>22 promoted while he was in Brooklyn North and</p> <p>23 stayed there until he went to the firearms</p> <p>24 unit.</p> <p>25 Q. Was there additional training that</p>

24 (Pages 90 to 93)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 25 of 122

<p style="text-align: right;">Page 94</p> <p>1 Cherry 2 you need to become a detective? 3 A. Additional training after you make 4 detective, but it is based on merit and his 5 performance. 6 Q. When he was in Brooklyn North 7 Narcotics, both as a police officer and 8 detective, where is his home precinct; I don't 9 know if I am using the right vernacular? 10 A. His office -- I am not sure 11 exactly the location of his office, I have 12 never been there, but it is in Brooklyn North, 13 I am not sure what precinct, where the office 14 was. 15 Q. He has been there, he started at 16 Brooklyn North somewhere around 2005? 17 A. That would be about right, yes. 18 Q. Where is he prior to being the 19 Brooklyn North? 20 A. He was assigned to the 73rd 21 Precinct Anti-Crime Unit. 22 Q. Where is the 73rd Precinct? 23 A. In Brooklyn. 24 Q. Do you know where in Brooklyn? 25 A. No.</p>	<p style="text-align: right;">Page 96</p> <p>1 Cherry 2 Q. Is your son friendly with either 3 of the Bossetti's? 4 MR. NOVIKOFF: Objection. 5 A. No. I mean they -- he knows them 6 to say hello, but they are not friends. They 7 don't socialize or anything like that with 8 each other. 9 Q. Have they ever worked together? 10 A. I don't believe so. 11 Q. So I believe you testified before 12 that your son said that Gary Bossetti is not 13 the type of guy that would go out and assault 14 somebody; is that correct? 15 MR. NOVIKOFF: Objection. You can 16 answer. 17 A. I believe I said that. 18 Q. You said that? 19 A. Yes. 20 Q. I thought you said your son said 21 that, I apologize. 22 Did your son opine on that subject 23 at all? 24 A. No. 25 Q. When did you start working as a</p>
<p style="text-align: right;">Page 95</p> <p>1 Cherry 2 Q. How long was he with the 73rd 3 Precinct? 4 A. That is where he started his 5 career after graduating from the academy. 6 Q. So somewhere in about 2000 or 2001 7 he started at the 73rd? 8 A. Yes. 9 Q. Do you know whether either of the 10 Bossetti's worked at the 73rd? 11 A. I don't know. 12 Q. Do you know whether your son ever 13 worked with the Bossetti's when they were New 14 York City police officers? 15 A. No, they never did. 16 Q. Do you know one way or the other? 17 A. No, he didn't work with them. 18 Q. Do you know whether he knew them? 19 A. Prior to -- 20 Q. When they were both police 21 officers with the New York City Police 22 Department? 23 A. No, I don't believe so. 24 Q. Do you know when they met? 25 A. I am not sure.</p>	<p style="text-align: right;">Page 97</p> <p>1 Cherry 2 police officer in Nassau County? 3 A. I was sworn in October 9, 1970, my 4 start date. 5 Q. How long were you employed by the 6 Nassau County Police Department? 7 A. 31 years. 8 Q. What was your last day of 9 employment there? 10 A. I left there May 3, 2001. 11 Q. Did you leave there voluntarily? 12 A. Yes. 13 Q. Did you retire? 14 A. Yes, I did. 15 Q. You collecting a full pension? 16 A. Yes, sir. 17 MR. GOODSTADT: Would you mark 18 this as Cherry Exhibit 2, request for 19 certification of basic police training. 20 (Cherry Exhibit 2, request for 21 certification of basic police training, 22 marked for identification, as of this 23 date.) 24 Q. I placed in front of Mr. Cherry 25 what has now been marked as Cherry Exhibit 2,</p>

25 (Pages 94 to 97)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 26 of 122

	Page 98	Page 100
1	<p>Cherry</p> <p>2 it is a one-page exhibit that has a Bates 3 number of 5462 at the bottom.</p> <p>4 Mr. Cherry, do you recognize the 5 document that has been marked as Cherry 6 Exhibit 2?</p> <p>7 A. Yes.</p> <p>8 Q. What is this document?</p> <p>9 A. This is a document from the 10 training division certifying my basic police 11 training.</p> <p>12 Q. Do you recognize the handwriting 13 on this document?</p> <p>14 A. Yes.</p> <p>15 Q. Let me start with the top half 16 that is written, it looks like all caps up to 17 the line that says from the top down to the 18 line that says rank and date of employment?</p> <p>19 A. Okay.</p> <p>20 Q. Do you see that section?</p> <p>21 A. Yes.</p> <p>22 Q. Whose handwriting is that?</p> <p>23 A. That is my handwriting.</p> <p>24 Q. If you look at rank, what did you 25 write there?</p>	<p>Cherry</p> <p>2 A. John P. Hunter.</p> <p>3 Q. And who is Mr. Hunter?</p> <p>4 A. He was a deputy inspector in the 5 training bureau.</p> <p>6 Q. Why were you getting this 7 certification certificate?</p> <p>8 A. I believe this was given to me 9 when I was a seasonal police officer with the 10 New York State Park Police, they required this 11 as part of their investigation.</p> <p>12 Q. Is this something that you 13 submitted to them or was it something that 14 Nassau County sent to them?</p> <p>15 MR. NOVIKOFF: Objection.</p> <p>16 A. The State Park Police asked me to 17 get this. Part of their requirements.</p> <p>18 Q. Now, if you look at the part on 19 the bottom, the typed part that starts 20 Detective Patrick J. Cherry, do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. It says Detective Patrick J. 23 Cherry, serial 4823, do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. What is 4823?</p>
1	<p style="text-align: center;">Page 99</p> <p>Cherry</p> <p>2 A. Detective retired.</p> <p>3 Q. That was your rank upon retiring?</p> <p>4 A. Detective.</p> <p>5 Q. That is what you currently have 6 now as a rank, retired detective?</p> <p>7 A. Well, I am not in the Police 8 Department any more so I don't really have a 9 rank, but I indicated that I was detective who 10 was retired.</p> <p>11 Q. So you don't currently have a 12 rank, so you are currently a civilian?</p> <p>13 A. Civilian, yes.</p> <p>14 Q. Then date of employment, what does 15 that mean?</p> <p>16 A. That is the date that I was sworn 17 into the Police Department, first day on the 18 job.</p> <p>19 Q. That is done prior to going into 20 the academy?</p> <p>21 A. Yes.</p> <p>22 Q. Now if you look at the deputy 23 inspector, do you recognize that name?</p> <p>24 A. Yes.</p> <p>25 Q. Who is that?</p>	<p style="text-align: center;">Page 101</p> <p>Cherry</p> <p>2 A. That is my serial number.</p> <p>3 Q. Is that also known as a shield 4 number?</p> <p>5 A. No, that is like my permanent 6 number at the Police Department. Shield 7 number is different.</p> <p>8 Q. Did you have a shield number when 9 you worked for the Nassau County Police 10 Department?</p> <p>11 A. Yes, I did.</p> <p>12 Q. What was your shield number?</p> <p>13 A. My detective shield number was 14 222.</p> <p>15 Q. Did you have a shield number when 16 you worked as a police officer at Ocean Beach?</p> <p>17 A. Yes.</p> <p>18 Q. What shield number were you at 19 Ocean Beach?</p> <p>20 A. I believe it was 426 I believe.</p> <p>21 Q. Did you have a serial number at 22 Ocean Beach?</p> <p>23 A. Not that I know of.</p> <p>24 Q. It says here that you retired from 25 the Nassau County Police Department on May 3,</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 27 of 122

Page 102	Page 104
<p>1 Cherry</p> <p>2 2001. Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Is that accurate?</p> <p>5 A. Yes, it is.</p> <p>6 Q. Next sentence says he was</p> <p>7 certified as a police officer on January 19,</p> <p>8 1971. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. What does that mean to be</p> <p>11 certified as a police officer?</p> <p>12 MR. NOVIKOFF: Objection. You can</p> <p>13 answer.</p> <p>14 A. That means that I completed the</p> <p>15 proper training as required by the Municipal</p> <p>16 Police Chief's Counsel of the State of New</p> <p>17 York.</p> <p>18 Q. Do you know what that training</p> <p>19 consisted of?</p> <p>20 A. It was -- I completed the Nassau</p> <p>21 County Police Academy and everything we did in</p> <p>22 the Police Academy, I am not sure exactly, it</p> <p>23 consisted of a lot of things.</p> <p>24 Q. Did it consist of anything outside</p> <p>25 of the training at the Police Academy?</p>	<p>1 Cherry</p> <p>2 Who administered those tests?</p> <p>3 A. Nassau County Civil Service.</p> <p>4 Q. After you passed those tests</p> <p>5 administered by Nassau County Civil Service</p> <p>6 and you had graduated from the academy, then</p> <p>7 you were certified to be a police officer in</p> <p>8 Nassau County?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. At that point in time once you</p> <p>11 passed all the tests and you graduated the</p> <p>12 Police Academy were you certified to be a</p> <p>13 police officer in any other place other than</p> <p>14 for Nassau County?</p> <p>15 A. I don't know.</p> <p>16 Q. For example could you have just</p> <p>17 gone and worked for the Suffolk County Police</p> <p>18 Department without taking any further tests,</p> <p>19 without going to any further academy?</p> <p>20 MR. NOVIKOFF: Objection. You can</p> <p>21 answer.</p> <p>22 A. No, probably not.</p> <p>23 Q. Why not?</p> <p>24 A. I don't think they have a lateral</p> <p>25 transfer.</p>
<p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Were you required to take any</p> <p>4 tests through civil service to become a police</p> <p>5 officer?</p> <p>6 A. Yes.</p> <p>7 Q. In Nassau County?</p> <p>8 A. Yes, that was prior to being</p> <p>9 appointed, yes.</p> <p>10 Q. So you couldn't be appointed</p> <p>11 unless you passed the test for civil service?</p> <p>12 A. That is correct.</p> <p>13 Q. And what were the tests that you</p> <p>14 were required to take to be appointed in</p> <p>15 Nassau County at the time that you were</p> <p>16 appointed?</p> <p>17 MR. NOVIKOFF: Objection. You may</p> <p>18 answer.</p> <p>19 A. A written test, psychological</p> <p>20 test, physical agility test, and a medical.</p> <p>21 Q. Were you required to take a</p> <p>22 polygraph?</p> <p>23 A. No.</p> <p>24 Q. Once you were, you had passed</p> <p>25 those tests -- strike that.</p>	<p>1 Cherry</p> <p>2 So you would need to take</p> <p>3 additional tests?</p> <p>4 A. Yes.</p> <p>5 Q. Would you have had to go to</p> <p>6 another academy?</p> <p>7 A. I don't know what their</p> <p>8 requirements would be on that. Probably.</p> <p>9 Q. How about would you have been able</p> <p>10 to go work for a town police department within</p> <p>11 Nassau County?</p> <p>12 MR. NOVIKOFF: Objection. You can</p> <p>13 answer.</p> <p>14 A. I believe if you -- I believe they</p> <p>15 took off -- the town's took off the same list.</p> <p>16 I know people came from towns to Nassau. I</p> <p>17 never heard of a person going from Nassau to a</p> <p>18 village.</p> <p>19 Q. Do you know whether the people</p> <p>20 that went from town to Nassau had to take any</p> <p>21 additional test?</p> <p>22 MR. NOVIKOFF: Objection.</p> <p>23 A. I know the village took over -- I</p> <p>24 don't know for sure in civil service. I know</p> <p>25 that Nassau County Police took over a number</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 28 of 122

Page 106	Page 108
1 Cherry	1 Cherry
2 of villages and absorbed those officers into	2 A. I don't know. I don't know of
3 the Police Department without any further	3 anybody that ever went from a county to a
4 tests or qualifications.	4 village.
5 Q. I am talking now about town police	5 Q. I am not talking about a county to
6 departments as opposed to a village police	6 village. I am talking about going from Nassau
7 department in Nassau County, same thing?	7 County Police Department to Suffolk County
8 MR. NOVIKOFF: Objection. You can	8 Police Department?
9 answer.	9 MR. NOVIKOFF: Objection.
10 A. Town and village, yes, same thing.	10 A. No. I don't believe you can.
11 Q. Is there a difference between a	11 Q. That is because you have to take
12 town and a village to your knowledge in Nassau	12 additional tests; is that correct?
13 County?	13 MR. NOVIKOFF: Objection.
14 MR. NOVIKOFF: Objection.	14 A. You have to take a test for the
15 A. Yes. But there is -- well, Nassau	15 Suffolk County Police Department.
16 is a little different, there is no town police	16 Q. Now my question is do you know
17 departments like -- I don't know if -- yes,	17 whether you as a Nassau County Police Officer
18 there is town police departments in Suffolk	18 could have gone to work at a village police
19 County. But there is no town police	19 department within Suffolk County without
20 departments in Nassau, there is just village	20 taking any additional tests?
21 police departments or city police departments.	21 MR. NOVIKOFF: Objection.
22 Q. So it is village, city, county?	22 A. I don't know.
23 A. Yes.	23 Q. You didn't know at the time or you
24 Q. To your knowledge could you have	24 don't know now?
25 worked for any of those three entities, either	25 A. Well I know now --
1 Cherry	1 Cherry
2 a town police -- strike that -- either a city	2 MR. NOVIKOFF: Objection. You can
3 police department, a village police department	3 answer.
4 or Nassau County Police Department once you	4 A. I know now, but I didn't know at
5 had passed the Nassau County Civil Service	5 the time that I was hired by Ocean Beach.
6 test and graduated the academy?	6 Q. What is your knowledge now as to
7 MR. NOVIKOFF: Objection.	7 whether that was permissible?
8 A. Yes. I mean I guess yes, you	8 MR. NOVIKOFF: Objection.
9 could.	9 A. Now I know you have to go through
10 MR. NOVIKOFF: Don't guess.	10 the civil service, Suffolk County Civil
11 A. Well, usually you pick where you	11 Service and take their required tests.
12 want to work before you went to the academy.	12 Q. When did you learn that
13 If you wanted to work for the village, the	13 requirement?
14 town -- the village or the county. But Nassau	14 A. Probably 2005.
15 had absorbed some of the villages and their	15 Q. How did you learn that
16 officers went on Nassau County Police	16 requirement?
17 Department without taking any additional	17 A. Civil service came down --
18 tests.	18 apparently civil service came down and advised
19 Q. So it was your understanding that	19 the Village that they had to go -- police
20 that could have happened without passing a	20 officers had to go through the civil service
21 test, but that you as a Nassau County Police	21 requirements.
22 Officer couldn't have gone to work in Suffolk	22 Q. My question is a little bit
23 County Police Department without taking	23 different. My question is how did you learn
24 additional tests; is that correct?	24 about it?
25 MR. NOVIKOFF: Objection.	25 A. I guess I learned through the

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 29 of 122

<p style="text-align: right;">Page 110</p> <p>1 Cherry 2 Police Department, I am not sure, either the 3 chief or George said all the guys had to go 4 through the civil service requirements.</p> <p>5 Q. That was in 2005? 6 A. Yes. 7 Q. When did you start working at 8 Ocean Beach? 9 A. May 2004. 10 Q. So at no point during 2004 did you 11 learn of this requirement? 12 A. I don't believe so, no. 13 Q. What tests to your understanding 14 were required to be certified in Suffolk 15 County as a police officer? 16 MR. NOVIKOFF: Objection. 17 A. I believe you have to go take a 18 physical agility, psychological and a medical. 19 Q. How about a polygraph, are you 20 aware of that requirement? 21 A. Yes, I think there is a polygraph. 22 Q. And you hadn't taken those tests 23 for Suffolk County; is that correct? 24 A. No, sir. 25 Q. Sitting here today have you taken</p>	<p style="text-align: right;">Page 112</p> <p>1 Cherry 2 were when you retired from Nassau; is that 3 correct? 4 MR. NOVIKOFF: Objection. 5 A. Correct. I believe when I was 6 hired by -- no, I believe -- well, I was hired 7 by Ocean Beach as a police officer at the time 8 in 2004. 9 Q. Were you certified to be a police 10 officer in Ocean Beach in 2004 when you were 11 hired? 12 MR. NOVIKOFF: Objection. 13 A. What do you mean by certified; 14 certified by Suffolk County? 15 Q. Certified to work and be paid as a 16 police officer working at a village in Suffolk 17 County? 18 MR. NOVIKOFF: Objection. 19 A. I believe I was at that time 20 because I was hired. 21 Q. What was your belief based on? 22 MR. NOVIKOFF: Objection. 23 Q. Just by the fact that you were 24 hired? 25 A. Yes.</p>
<p style="text-align: right;">Page 111</p> <p>1 Cherry 2 them at any time up to and including today, 3 have you taken these tests that are required 4 by Suffolk County at any time? 5 A. No, I have not. 6 Q. And if you had taken those tests 7 and passed them would you be certified to be 8 an officer in Suffolk County, or would you 9 need to attend the academy as well? 10 MR. NOVIKOFF: Objection. 11 A. I believe you don't have to attend 12 the Suffolk Academy. 13 Q. So your understanding was that 14 your attendance at the Nassau Police Academy 15 would have satisfied the academy requirement, 16 but yet you still had to take the other civil 17 service tests? 18 MR. NOVIKOFF: Objection. You can 19 answer. 20 A. That is what I believe now, yes. 21 Q. And the basis of your belief is 22 what you learned in 2005? 23 A. Yes, sir. 24 Q. So without taking those tests you 25 were still a civilian like you testified you</p>	<p style="text-align: right;">Page 113</p> <p>1 Cherry 2 Q. Sitting here today do you believe 3 that you were certified to be hired as a 4 police officer and be paid as a police officer 5 in 2004 in Suffolk County? 6 MR. NOVIKOFF: Objection. 7 A. I was qualified as a police 8 officer, however I -- you see I was under the 9 impression -- yes, I believe I was hired, I 10 was able to be hired at that time. I was 11 under the impression that I was hired as a 12 police officer. 13 Q. I understand what your impression 14 was at the time you were hired. I am asking 15 you sitting here today with all the knowledge 16 that you have today do you believe at the time 17 that you were hired to be a police officer 18 that you were certified to be hired as a 19 police officer and paid as a police officer in 20 a village in Suffolk County? 21 MR. NOVIKOFF: Note my objection. 22 You can answer. 23 A. I don't know. I am not sure if 24 they were -- if those qualifications were in 25 effect in 2004. I was aware that this</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 30 of 122

Page 114	Page 116
<p>1 Cherry 2 decision was made either early 2005, I don't 3 know if it applied in 2004.</p> <p>4 Q. So you didn't know whether Suffolk 5 County had the requirements that you testified 6 to, the physical agility test, the 7 psychological, the medical and the polygraph 8 in 2004?</p> <p>9 MR. NOVIKOFF: Objection. You can 10 answer.</p> <p>11 A. I don't know if that was in effect 12 to become a police officer in the Village at 13 that time. Personally I don't know that.</p> <p>14 Q. Let's assume that they were in 15 effect, take that assumption for this 16 question, assuming they were in effect, is it 17 your position still that you were certified to 18 be hired and paid as a police officer by the 19 Village of Ocean Beach in 2004?</p> <p>20 MR. NOVIKOFF: Objection. You can 21 answer.</p> <p>22 A. Assuming what you said, no, 23 probably not.</p> <p>24 Q. So assuming what I said is true, 25 you were a civilian in 2004 when you were</p>	<p>1 Cherry 2 would be correct.</p> <p>3 Q. Did you have any pistol licenses 4 in 2004 when you were hired?</p> <p>5 A. Yes, I did.</p> <p>6 Q. What licenses did you have?</p> <p>7 A. I have a Suffolk County pistol 8 permit.</p> <p>9 Q. Any others?</p> <p>10 A. No.</p> <p>11 Q. When you were hired to be a police 12 officer in May of 2004 did you carry a weapon 13 when you were a police officer?</p> <p>14 A. Yes.</p> <p>15 Q. Was the weapon loaded?</p> <p>16 A. Yes.</p> <p>17 Q. You wore or carried a shield?</p> <p>18 A. Yes.</p> <p>19 Q. You held yourself out to be a 20 police officer?</p> <p>21 A. Yes.</p> <p>22 Q. You were a uniform?</p> <p>23 A. Yes.</p> <p>24 Q. I just want to go back now before 25 you worked in Ocean Beach when you were still</p>
Page 115	Page 117
<p>1 Cherry 2 working as a police officer in Ocean Beach; is 3 that correct?</p> <p>4 MR. NOVIKOFF: Objection. You can 5 answer that.</p> <p>6 A. Assuming what you said, yes, 7 probably.</p> <p>8 Q. Well, what do you mean by 9 probably?</p> <p>10 A. Well, if I was not a police 11 officer what would I be?</p> <p>12 Q. So the answer is yes; not yes 13 probably?</p> <p>14 MR. NOVIKOFF: Objection. His 15 answer is his answer.</p> <p>16 Q. I am asking you yes or no whether 17 assuming that the tests that you testified to 18 before were a requirement in 2004, at the time 19 that you were hired as a police officer and 20 paid as a police officer in 2004 you actually 21 were a civilian in Suffolk County; is that 22 correct?</p> <p>23 MR. NOVIKOFF: Objection. You can 24 answer.</p> <p>25 A. Based on your assumption that</p>	<p>1 Cherry 2 employed at Nassau County, why don't you walk 3 me through the titles that you had starting 4 when you started and ended in 1970?</p> <p>5 A. I was sworn in as a police 6 officer. I was -- just want the titles?</p> <p>7 Q. Your titles and precincts if that 8 applies?</p> <p>9 A. I was assigned to First Precinct. 10 While I was at the First Precinct I was 11 temporarily assigned to the Firearms Training 12 Bureau as an instructor, and that would be 13 when a class was in effect. When the class 14 was over I would go back to the precinct. I 15 went back and forth several times before in 16 1974 I was transferred from the First Precinct 17 to the Narcotics Bureau. 18 I was in the Narcotics Bureau for 19 two years assigned to the Strike Force which 20 was like a Narcotics Anti-Crime Unit. And in 21 1976 May of '76 I was promoted to detective. 22 I stayed in the Narcotics Bureau until my 23 retirement in 2001 as a detective.</p> <p>24 Q. During your time that you were 25 employed either as a police officer or a</p>

30 (Pages 114 to 117)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 31 of 122

<p style="text-align: right;">Page 118</p> <p>1 Cherry 2 detective or a firearms instructor with Nassau 3 County --</p> <p>4 A. The title was still police officer 5 assigned to the Firearms Training Bureau.</p> <p>6 Q. Just so we are clear, the titles 7 that you had in Nassau County were police 8 officer and detective; is that correct?</p> <p>9 A. Two titles, correct.</p> <p>10 Q. So at any time when you were a 11 police officer or a detective did you ever 12 work for Internal Affairs?</p> <p>13 A. No.</p> <p>14 Q. Does Nassau County have an 15 Internal Affairs Bureau or Department?</p> <p>16 A. Yes.</p> <p>17 Q. And what is Internal Affairs in 18 the Nassau County Police Department?</p> <p>19 A. They investigate allegations 20 against police officers of wrongdoing in the 21 department.</p> <p>22 Q. Were you ever trained in Internal 23 Affairs?</p> <p>24 A. No, sir.</p> <p>25 Q. Did you ever have any experience</p>	<p style="text-align: right;">Page 120</p> <p>1 Cherry 2 police officer?</p> <p>3 A. As a detective.</p> <p>4 Q. How many investigations of 5 assaults did you undertake when you were in 6 Nassau County?</p> <p>7 A. In total maybe about a dozen.</p> <p>8 Q. And did any of those 9 investigations of assault involve allegations 10 that a police officer assaulted somebody?</p> <p>11 A. No.</p> <p>12 Q. They were all either assaults 13 between civilians or an assault by a civilian 14 on a police officer; is that correct?</p> <p>15 A. That is correct.</p> <p>16 Q. So in your 31 years you 17 investigated approximately 12 assaults; is 18 that correct?</p> <p>19 A. Yes.</p> <p>20 MR. NOVIKOFF: Objection.</p> <p>21 A. Roughly.</p> <p>22 Q. When you were employed with Nassau 23 County that was a full-time position; is that 24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 119</p> <p>1 Cherry 2 during the times that you were a detective or 3 police officer in Nassau County investigating 4 allegations of misconduct by the police 5 officers?</p> <p>6 A. No.</p> <p>7 Q. Did you ever have any experience 8 investigating allegations of assault?</p> <p>9 A. Yes.</p> <p>10 Q. And what did that experience 11 involve?</p> <p>12 A. As a police officer I investigated 13 assaults that occurred in a precinct in my 14 area of patrol on assignment or coming across 15 it. As a detective I was involved in not a 16 lot of investigations involving assaults, but 17 occasionally a police officer would be 18 assaulted as part of a narcotics 19 investigation, and I was involved in just 20 taking statements and investigating the 21 assault and resisting arrest or whatever was 22 involved. And on several occasions I was 23 assigned to investigate assaults with local 24 precincts for the homicide squad.</p> <p>25 Q. While you were a detective or a</p>	<p style="text-align: right;">Page 121</p> <p>1 Cherry 2 Did you work any other jobs while 3 you were employed as a Nassau County Police 4 Officer or detective?</p> <p>5 A. No.</p> <p>6 Q. Never worked security anywhere as 7 a bouncer or any other part-time jobs?</p> <p>8 A. No, sir.</p> <p>9 Q. When you were with the Nassau 10 County Police Department what tours did you 11 work?</p> <p>12 A. I worked -- as a uniform officer I 13 worked around the clock, 8 to 4 and 4 to 12 14 and midnight to 8 a.m. As a detective I 15 primarily worked 8 to 4's and 4 to 12's. On 16 special assignments you may work a midnight 17 tour depending on the needs of the unit.</p> <p>18 Q. I know that you testified that you 19 never had been disciplined while you were at 20 Nassau County, but had you ever been 21 investigated by Internal Affairs?</p> <p>22 A. Not to my knowledge.</p> <p>23 MR. NOVIKOFF: That's why its 24 Internal Affairs.</p> <p>25 Q. And you retired in what year from</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 32 of 122

<p style="text-align: right;">Page 122</p> <p>1 Cherry 2 the Nassau County Police Department? 3 A. 2001. 4 Q. And why did you retire? 5 A. I just -- you know, I figured I 6 did 31 years, I was ready to retire and 7 voluntarily retired. 8 Q. Subsequent to your retirement what 9 was the first place that you were employed? 10 A. The New York State Park Police. 11 Q. And what was your title with the 12 New York State Park Police? 13 A. Police officer. 14 Q. Was that a full-time position? 15 A. No, seasonal position. 16 Q. Where were you -- did you report 17 into a certain precinct or headquarters? 18 A. I was assigned to the Jones Beach 19 Barracks. 20 Q. I assume that is in Jones Beach? 21 A. Yes, Jones Beach State Park. 22 Q. That is in Nassau County; is that 23 correct? 24 A. Yes. But the region I was 25 assigned to encompassed Nassau and Suffolk.</p>	<p style="text-align: right;">Page 124</p> <p>1 Cherry 2 those were sufficient to be certified to work 3 as a seasonal police officer for the New York 4 State Park Police? 5 MR. NOVIKOFF: Objection. 6 A. That is correct. 7 Q. Did you have any additional 8 training when you worked at the New York State 9 Park Police? 10 A. Yes. We had two weeks of 11 training. 12 Q. What type of training was that? 13 A. Going over Penal Law, firearms 14 training, first aid training. Their basic 15 procedures and form training. 16 Q. You worked there as a police 17 officer? 18 A. Yes. 19 Q. You were not a detective there; 20 correct? 21 A. No, sir. 22 Q. That is a position that you are 23 paid by the State? 24 A. Correct. 25 Q. What was the process that you</p>
<p style="text-align: right;">Page 123</p> <p>1 Cherry 2 Q. When you say a seasonal officer 3 with the New York State Park Police, was the 4 seasonal defined in the same way as you 5 defined it before? 6 A. Basically it was a summer season, 7 they went from April to mid September. 8 Q. And how many hours a week were you 9 working the first year as a seasonal police 10 officer with the New York State Park Police? 11 A. I would say I worked three tours, 12 about 24 hours the first year and probably 36 13 hours the second year. You can work as many 14 days as you wanted to. 15 Q. What years did you work there as a 16 seasonal police officer? 17 A. 2002 and 2003. 18 Q. Did you ever take any additional 19 tests to be a seasonal police officer with the 20 New York State Park Police? 21 A. No. 22 MR. NOVIKOFF: Objection. 23 Q. So the tests that you testified to 24 that you passed in Nassau County and the 25 graduation in Nassau County Police Academy,</p>	<p style="text-align: right;">Page 125</p> <p>1 Cherry 2 undertook to get that job? 3 A. There was an application to fill 4 out, you had an interview, and you had to get 5 a medical form signed by your physician saying 6 you were capable of performing duties. 7 Q. So you had it from your own 8 physician or you had -- 9 A. No. You had a form provided by 10 the State Park Police to take to your 11 physician to have signed. 12 Q. How much -- did they pay you on an 13 hourly rate? 14 A. Yes. 15 Q. How much was the hourly rate? 16 A. \$16.67. 17 Q. For both seasons, '02 and '03? 18 A. I believe so, yes. 19 Q. And while you were -- let's talk 20 about during the season, during '02 and '03, 21 did you work any other jobs during the season? 22 A. No. 23 Q. How about on the off season, using 24 the April to September timeframe defined as a 25 season in this context, did you work any jobs</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 33 of 122

<p style="text-align: right;">Page 126</p> <p>1 Cherry 2 in the off season during those two years? 3 A. No. 4 Q. So during the period that you were 5 a seasonal police officer for the New York 6 State Park Police you didn't work at Ocean 7 Beach at all; correct? 8 A. No. 9 Q. Did you carry a weapon when you 10 were a seasonal police officer with the New 11 York State Park Police? 12 A. Yes. 13 Q. Did you have a shield? 14 A. Yes. 15 Q. Do you recall what your shield 16 number was? 17 A. 55. 18 Q. During your time that you were 19 employed by the New York State Park Police 20 were you ever disciplined? 21 A. No. 22 Q. Were you ever investigated by 23 Internal Affairs? 24 A. No. 25 Q. Did you ever have any claim or</p>	<p style="text-align: right;">Page 128</p> <p>1 Cherry 2 Q. Who employed you as a patrol 3 officer? 4 A. The New York State Park Police. 5 You are talking about the State Park Police 6 now, correct, the 2002, 2003 season? 7 Q. I was talking about the period 8 after that, but let's go back to what your 9 duties were with the New York State Park 10 Police. What were your duties when you were a 11 seasonal officer with the New York State Park 12 Police? 13 A. To patrol the parks, enforce the 14 laws of New York State, handle accident 15 scenes, medical emergencies, crowd control. 16 And investigate -- additional investigation on 17 incidents that occurred down there, crimes and 18 violations. 19 Q. Anything else? 20 A. That is basically the police 21 patrol function. 22 Q. What do you mean by an additional 23 investigation of incidents? 24 A. When you had a crime committed 25 down there or an accident investigation you do</p>
<p style="text-align: right;">Page 127</p> <p>1 Cherry 2 allegations brought against you in your 3 position as a seasonal police officer? 4 MR. NOVIKOFF: Objection. 5 A. No. 6 Q. Why did you leave your employment 7 with the State Park Police? 8 A. The Park Police terminated their 9 seasonal program. 10 Q. In the off season between '02 and 11 '03 did you collect unemployment? 12 A. No, I don't believe so that year. 13 Q. How about after the '03 season, 14 did you collect unemployment? 15 A. Yes, I did. 16 Q. Now, there came a point in time 17 that you were -- strike that. 18 What was the job that you had 19 subsequent to the end of the '03 season when 20 you were a seasonal police officer with the 21 State Park Police? 22 A. I was a patrol officer. 23 Q. Where were you a patrol officer? 24 A. The Long Island region which 25 consists of Nassau and Suffolk Counties.</p>	<p style="text-align: right;">Page 129</p> <p>1 Cherry 2 the preliminary investigation, take a 3 statement from the witnesses or the victim. 4 And if it required any further investigation 5 the detectives would follow up on it and you 6 would have to submit that at the end of the 7 tour and the sergeant has to review it. 8 Q. So your role was just to take the 9 statements from the witnesses and/or the 10 victims? 11 A. Yes. 12 Q. And if there was any subsequent or 13 further investigation, that was out of your 14 hands, that was with the detective or the 15 sergeant? 16 A. It would depend. They only had a 17 limited number of detectives, I think three to 18 four. When somebody had a robbery down there, 19 the detectives were not available, we ended up 20 taking statements from the victims and 21 witnesses involved, doing the background on 22 the subjects. I believe there were four 23 subjects involved in the robbery. So we did 24 the complete investigation, myself and several 25 other officers involving the robbery.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 34 of 122

<p>1 Cherry 2 I also had a case where a man 3 drowned his dog in the beach, it was a hot 4 Sunday afternoon, and I handled that 5 investigation also, taking statements from 6 multiple witnesses and doing back up witness 7 investigation and taking statements, arranging 8 for an autopsy on the crime scene on the dog. 9 So I got involved in that.</p> <p>10 Q. And other than those two 11 investigations did you do any other 12 investigation in your two years as a seasonal 13 police officer in the Park Police?</p> <p>14 A. Other than the initial 15 investigation that I stated, no.</p> <p>16 Q. Did you ever discharge your weapon 17 as a seasonal police officer in the State Park 18 Police?</p> <p>19 A. No.</p> <p>20 Q. Have you ever discharged your 21 weapon as a Nassau County Police Officer?</p> <p>22 A. No.</p> <p>23 Q. When you were a seasonal police 24 officer with the State Park Police did you 25 issue any summonses?</p>	<p>1 Cherry 2 trials.</p> <p>3 Q. At trials?</p> <p>4 A. Yes, four or five.</p> <p>5 Q. Which entity were you employed by 6 at the time that you testified at trial?</p> <p>7 A. Nassau County Police Department.</p> <p>8 Q. So you never testified at trial 9 with respect to your employment at the Park 10 Police or at Ocean Beach?</p> <p>11 A. No.</p> <p>12 Q. What was, we will go back to the 13 question that I asked before, what was the job 14 that you had after the State Park Police job 15 which ended at the end of the season '03?</p> <p>16 A. Yes. The next job I had was at 17 Ocean Beach in the season of 2004.</p> <p>18 Q. Did you work any jobs between the 19 end of the season of '03 and the beginning of 20 the season of '04?</p> <p>21 A. No.</p> <p>22 Q. But you collected unemployment 23 during that period; is that correct?</p> <p>24 A. That period, yes.</p> <p>25 Q. When did you -- strike that.</p>
<p>1 Cherry 2 A. Yes.</p> <p>3 Q. Did you make any arrests?</p> <p>4 A. Yes.</p> <p>5 Q. So you had authority to do those 6 two things?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever testify in connection 9 with any of those arrests?</p> <p>10 A. Yes.</p> <p>11 Q. And that was in the subsequent 12 proceeding with respect to the arrests?</p> <p>13 A. Correct.</p> <p>14 Q. Is that in court?</p> <p>15 A. Yes. Grand Jury.</p> <p>16 Q. Grand Jury?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ever testify during the 19 trial of any of those arrests?</p> <p>20 A. No.</p> <p>21 Q. Have you ever testified at a 22 trial?</p> <p>23 A. Yes.</p> <p>24 Q. How many times?</p> <p>25 A. I would say about four or five, at</p>	<p>1 Cherry 2 How learn about the job at Ocean 3 Beach?</p> <p>4 A. When I first retired George asked 5 me, George Hesse asked me if I was interested 6 in working for Ocean Beach and I said no, I 7 wasn't planning on working, so I said no. 8 When I left the State Park Police he again 9 asked me if I was interested in working at 10 Ocean Beach, I said yes, I would give it a 11 shot.</p> <p>12 Q. How did you know Hesse at the time 13 that you retired from the Nassau County job?</p> <p>14 A. My son was working for Ocean 15 Beach, I met George, he stopped by the house 16 once or twice to either pick up my son or drop 17 him off, and I met George that way. And when 18 I first retired he knew I was retiring from 19 what my son told him apparently, and he asked 20 me if I was interested in going to the Ocean 21 Beach Police Department.</p> <p>22 Q. So your son maintained contact 23 with George Hesse after he left Ocean Beach?</p> <p>24 A. Yes, occasionally.</p> <p>25 Q. So by the time you retired from</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 35 of 122

<p style="text-align: right;">Page 134</p> <p>1 Cherry 2 Nassau County your son had already started 3 working in New York; is that correct? 4 A. Yes. 5 Q. And did George Hesse contact you 6 originally when you retired from Nassau 7 County? 8 A. He was over the house dropping my 9 son off from work and he knew I was retired, 10 he said are you interested in coming to work 11 for Ocean Beach and at that point I said no. 12 Q. So at the time that you retired in 13 '01 your son was working in Ocean Beach? 14 A. No, he was not. 15 Q. So then what was George Hesse 16 doing at your house? 17 A. I guess he stopped by the house to 18 see Patrick. 19 Q. And Patrick was living with you at 20 the time? 21 A. Yes. 22 Q. Do you recall what he said to you 23 in connection with possibly working at Ocean 24 Beach? 25 A. As I said he knew I was retiring,</p>	<p style="text-align: right;">Page 136</p> <p>1 Cherry 2 be over -- I had never been to Ocean Beach 3 before I went to work there, but I don't think 4 so. 5 Q. Was George at your house at any 6 point in time other than that one incident 7 that you testified to before you left the 8 position with the Park Police? 9 MR. NOVIKOFF: Objection. You can 10 answer. 11 A. I don't recall, he may have been, 12 but I don't recall any specific time. 13 Q. You said there may have been those 14 couple of conversations that you had with him, 15 two or three, do you recall any details of any 16 conversations you actually had with him? 17 MR. NOVIKOFF: Objection. 18 A. No. 19 Q. Other than for the one time that 20 you testified to when he was over your house 21 and asked you to come work at Ocean Beach, has 22 George ever been at your house on any other 23 occasion? 24 A. Since then? 25 Q. At any time either before then or</p>
<p style="text-align: right;">Page 135</p> <p>1 Cherry 2 he said would be interested in coming to work 3 at Ocean Beach. At that time I said no, I 4 wasn't interested. 5 Q. How come? 6 A. I wasn't going to work. 7 Q. Do you recall when that 8 conversation happened? 9 A. It had to be shortly after -- 10 either just before I retired or slightly after 11 in 2001, in May of 2001. 12 Q. At any point in time between that 13 conversation and when you ended your work with 14 the State Park Police had you discussed with 15 George Hesse the possibility of working at 16 Ocean Beach? 17 A. No. 18 Q. Had you had any contact with 19 George Hesse during that period? 20 A. I don't think I -- I may have once 21 or twice, but I don't recall -- I don't 22 believe I had a lot of contact with him. I 23 may have saw him or talked to him once or 24 twice during that two year period. My son 25 didn't work there any more, I had no reason to</p>	<p style="text-align: right;">Page 137</p> <p>1 Cherry 2 after that? 3 A. Yes, he has been to the house 4 several occasions. 5 Q. Before then or after? 6 A. After then. 7 Q. Had he been to your house before 8 then? 9 A. Before 2001? 10 Q. Yes. 11 A. Yes. He may have been to see my 12 son. 13 Q. How many times? 14 A. That is when he dropped him off 15 occasionally from work, or picked him up going 16 to work. So it was not often, it was just 17 occasionally he would stop by. He has been to 18 the house a number of times. 19 Q. Approximately how many? 20 A. To pick up my son, I couldn't 21 venture a guess, he has been there. 22 Q. More than ten? 23 A. I wouldn't say -- maybe, maybe 24 not. I don't know. 25 Q. How about after 2001 how many</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 36 of 122

<p style="text-align: right;">Page 138</p> <p>1 Cherry 2 times has he been to your house? 3 A. Since I was working there in 2004 4 he picked me up a couple of times to go to 5 work or dropped me off or he just stopped by, 6 you know, say hello. 7 Q. So other than for picking you up 8 or dropping you off he would also stop by 9 socially? 10 A. Yes, occasionally. Maybe three or 11 four times all together. 12 Q. And after the time in '01 where he 13 asked you to come work there when was the next 14 time you had any discussions with George Hesse 15 about the possibility of working at the beach? 16 A. It was in the papers that they 17 were not going to bring us back for, the New 18 York State Park Police was not going to bring 19 us back for the 2004 season. We had -- he 20 asked me if I was interested. Sometime in 21 the early -- before -- it might have been 22 around -- he asked me if I was interested in, 23 since they were not going to have -- I wasn't 24 going to be going back with the New York State 25 Park Police, if I wanted to come and work for</p>	<p style="text-align: right;">Page 140</p> <p>1 Cherry 2 than for an end of season party? 3 A. No. 4 Q. The end of season party, is that 5 something for the Police Department of Ocean 6 Beach? 7 A. Yes. 8 Q. Everyone who is employed by the 9 Police Department is invited to that? 10 A. Yes. 11 Q. How did you receive an invite to 12 that? 13 A. Usually puts a notice up on the 14 bulletin board in the office. 15 Q. Who paid for that? 16 A. I don't know. 17 MR. NOVIKOFF: Objection. 18 Q. You don't know how that party was 19 funded? 20 MR. NOVIKOFF: Objection. 21 A. No. 22 Q. You didn't pay anything for it, 23 did you? 24 A. No. 25 Q. Let's go back now to the time in</p>
<p style="text-align: right;">Page 139</p> <p>1 Cherry 2 Ocean Beach. 3 Q. Do you recall when that was after 4 the paper reported that you were not coming 5 back? 6 A. It was probably April or May. 7 Q. Of 2004? 8 A. Yes, I believe so to the best of 9 my recollection. 10 Q. Have you ever been at George 11 Hesse's house? 12 A. Yes. 13 Q. How many times? 14 A. I have been there four times. 15 Mostly for end of season parties. 16 Q. At his house? 17 A. Yes. 18 Q. And what years were you there for 19 the end of season parties at his house? 20 A. 2004. I believe it was 2004, 21 2005, usually have an end of the season party. 22 I am not sure because Chief Paradiso had one 23 at his house. I would say I have been to 24 George's house about four times. 25 Q. Have you ever been there other</p>	<p style="text-align: right;">Page 141</p> <p>1 Cherry 2 April or May of '04 when George Hesse -- 3 George Hesse approached you about the 4 possibility of working in Ocean Beach? 5 A. I believe so. He didn't approach 6 me, he asked me would I be interested in going 7 over there, and I said yes. 8 Q. Was that a phone conversation, in 9 person conversation, through some other means? 10 A. I am not sure. 11 Q. You don't recall one way or the 12 other? 13 A. No. 14 Q. So you don't recall how he 15 approached you about working there? 16 MR. NOVIKOFF: Objection. 17 A. I don't recall. 18 Q. What did he say to you? 19 A. Would you be interested in coming 20 over to Ocean Beach to work. 21 Q. What was your response? 22 A. I said yes, I would be. 23 Q. And did you fill out any paperwork 24 to apply for that position? 25 A. I believe I did, yes.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 37 of 122

<p style="text-align: right;">Page 142</p> <p>1 Cherry 2 Q. What paperwork did you fill out to 3 apply? 4 A. I believe it was an application 5 form. 6 Q. You fill out an application? 7 A. I believe so, yes. 8 Q. Do you recall when you filled out 9 that application? 10 A. Probably in early 2004. April or 11 May I am not sure of the exact date. 12 Q. Where were you when you filled out 13 the application? 14 A. I went to the station. 15 Q. In Ocean Beach? 16 A. Yes. 17 Q. Who did you submit the application 18 to? 19 A. Sergeant Hesse. 20 Q. He was a sergeant at the Ocean 21 Beach Police Department at that time? 22 A. Yes. 23 Q. How did you learn that he was a 24 sergeant? 25 MR. NOVIKOFF: Objection.</p>	<p style="text-align: right;">Page 144</p> <p>1 Cherry 2 the best of my recollection. 3 RQ Q. I would like to mark the record 4 here, I don't think we have been produced a 5 copy of a written application that Mr. Cherry 6 filled out. 7 MR. NOVIKOFF: I know that we 8 produced 9,000 pages. I cannot represent 9 to you that I know what the identity of 10 each of one of those are. We will search 11 to see what was produced and if you 12 requested Mr. Cherry's application I am 13 sure it should have been provided as part 14 of his personnel file. 15 MR. GOODSTADT: Maybe it was 16 produced, I have not seen it. 17 MR. NOVIKOFF: I would ask you to 18 remind me after the deposition and we 19 will get it. 20 MR. GOODSTADT: We will send you a 21 letter. 22 MR. NOVIKOFF: Yes. 23 Q. Did you submit a resume? 24 A. Yes, I did. 25 Q. Did they ask you to submit a</p>
<p style="text-align: right;">Page 143</p> <p>1 Cherry 2 A. That was his rank, you know, I 3 don't -- somebody told me, he was a sergeant, 4 I saw his uniform, he had three stripes on his 5 arm. 6 Q. Did you know that he was a 7 sergeant before you went there to fill out the 8 paper? 9 A. Yes, my son worked there and he 10 was a sergeant when my son worked there. 11 Q. Do you know, was the application 12 that you filled out, was that an Ocean Beach 13 document or was that a Suffolk County 14 document? 15 MR. NOVIKOFF: The application 16 that Hesse filled -- 17 MR. GOODSTADT: He testified -- 18 MR. NOVIKOFF: He said the 19 application that he filled out. Maybe I 20 am wrong. 21 Q. The application that you testified 22 to that you filled out, was that a document 23 for Ocean Beach or was that a document for 24 Suffolk County? 25 A. I believe it was Ocean Beach. To</p>	<p style="text-align: right;">Page 145</p> <p>1 Cherry 2 resume or is that something that you did 3 voluntarily? 4 A. I just sent it along as part of 5 the application. 6 Q. What do you mean you sent it 7 along? 8 A. I provided it, a resume, give them 9 some idea of my police background. 10 Q. Did you give the resume to 11 Sergeant Hesse? 12 A. Yes. 13 Q. You did that on the same day that 14 you filled out the application? 15 A. I believe so. 16 MR. GOODSTADT: Mark this document 17 as Cherry Exhibit 3, resume. 18 (Cherry Exhibit 3, resume, marked 19 for identification, as of this date.) 20 MR. GOODSTADT: Let's take five 21 minutes. 22 THE VIDEOGRAPHER: The time is 23 12:04, we are going off the record. 24 (Recess taken.) 25 THE VIDEOGRAPHER: The time is</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 38 of 122

<p style="text-align: right;">Page 146</p> <p>1 Cherry 2 12:12. We are back on the record. 3 Q. Mr. Cherry, I placed in front of 4 you what has been marked as Cherry Exhibit 3, 5 a three-page document Bates numbered 4104 6 through 4106. Do you recognize this document? 7 A. Yes. 8 Q. What is it? 9 A. Its my resume. 10 Q. Is this the resume that you 11 submitted to Sergeant Hesse in connection with 12 your application to the Village of Ocean 13 Beach? 14 A. Yes. It appears to be. 15 Q. Other than for the application and 16 this resume did you submit any other paperwork 17 for the Village of Ocean Beach in connection 18 with your application for employment there? 19 A. I think I gave him a copy of my 20 initial police training council certificate. 21 Q. Anything else? 22 A. I don't recall. I -- whatever 23 they required I submitted. 24 Q. Did you submit any documents that 25 were produced by civil service, either Suffolk</p>	<p style="text-align: right;">Page 148</p> <p>1 Cherry 2 A. I don't believe so, no. 3 Q. It was only that one day that you 4 did all these tasks as part of the application 5 process or was -- 6 A. I would say it was just filling 7 out the application and what these forms with 8 me on that particular day, that was it. 9 Q. And did there come a point in time 10 where you were actually offered a job as a 11 police officer? 12 A. Yes. 13 Q. When was that? 14 A. Shortly after I filled out the 15 application I was asked to come down and get 16 sworn in. I don't know the exact date. 17 Q. Being asked to be sworn in, was 18 that the notification process that you had 19 been offered a job as a police officer? 20 A. Yes. 21 Q. How long after your forms that you 22 filled out and your interview did that happen? 23 A. I am not sure. 24 Q. Was it days, weeks? 25 A. Weeks probably.</p>
<p style="text-align: right;">Page 147</p> <p>1 Cherry 2 County or Nassau County? 3 A. I may have -- I don't know if I 4 submitted this form or not, this form that we 5 had here. 6 MR. NOVIKOFF: Let the record 7 reflect Cherry Exhibit 2. 8 A. I don't know if I submitted a copy 9 of that or not, but I gave my municipal police 10 council certificate. 11 Q. Did you have an interview for the 12 position? 13 A. With Sergeant Hesse. 14 Q. Anybody else? 15 A. No. 16 Q. How long did that interview last? 17 A. The whole process between the 18 interview and the filling out the forms, maybe 19 an hour or two. 20 Q. How long did the interview part 21 last? 22 A. I would say maybe a half hour. 23 Q. As part of that process did you 24 meet with any other employees from the Village 25 of Ocean Beach other than for George Hesse?</p>	<p style="text-align: right;">Page 149</p> <p>1 Cherry 2 Q. Hours? 3 A. Probably weeks. I am not sure of 4 the exact date that I was sworn in. 5 Q. How were you asked to come and get 6 sworn in, meaning did somebody call you, did 7 you get a letter? 8 A. I believe George, Sergeant Hesse 9 called me and asked me to come in. 10 Q. Do you know if anybody else had 11 any role in the decision to offer you a job as 12 a police officer other than from Mr. Hesse? 13 A. I believe Chief Paradiso had to 14 approve it. 15 Q. What is your basis for that 16 belief? 17 A. Because he is the chief of the 18 department, I have to go through him. 19 Q. Do you know whether he actually 20 approved it? 21 A. I don't know. 22 Q. Do you know whether it was 23 actually a requirement that he had to approve 24 it? 25 A. Was there a requirement?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 39 of 122

<p style="text-align: right;">Page 150</p> <p>1 Cherry 2 Q. Yes. 3 MR. NOVIKOFF: Note my objection. 4 A. I don't know if it was a 5 requirement, but he was the chief of the 6 department, I would assume that he had the 7 final say, or had something to do with it. 8 Q. Prior to that time had you ever 9 met Chief Paradiso? 10 A. No. 11 Q. Had you ever spoken with him? 12 A. Prior to that time, no. 13 Q. Had you ever had any 14 correspondence with Chief Paradiso prior to 15 the time that you were offered a job at Ocean 16 Beach? 17 A. No. 18 Q. Other than for -- strike that, 19 your son wasn't working there at the time. 20 Did you know any other police officers in 21 Ocean Beach at that time? 22 MR. NOVIKOFF: Objection. You can 23 answer. 24 A. I don't think so, no. 25 Q. At that time in April or May of</p>	<p style="text-align: right;">Page 152</p> <p>1 Cherry 2 A. I didn't know that at the time. I 3 didn't know it was seasonal police officer, 4 was a classification. I knew it was going to 5 be just for the summer season, he needed more 6 people, but I didn't know if I was a 7 classification, a civil service clarification. 8 Q. What were your -- strike that. 9 Did there come a point in time 10 where you actually went down there and were 11 sworn in as a police officer? 12 A. Yes. 13 Q. When was that? 14 A. I don't know the exact date. 15 Q. Do you know what month it was? 16 A. I am not sure. It had to be 17 sometime before the season started, but I am 18 not sure when it started. 19 Q. How far before the season started 20 was it, days, weeks, months? 21 A. It could have been a month, it 22 could have been a couple of weeks, I am not 23 sure. 24 Q. Is there anything that would 25 refresh your recollection?</p>
<p style="text-align: right;">Page 151</p> <p>1 Cherry 2 2004 do you know whether your son had any 3 communications or correspondence with anyone 4 at Ocean Beach? 5 A. No, I don't know. I don't know. 6 Q. Was he in communication with 7 George Hesse at that time? 8 A. I don't know. 9 Q. And what position were you asked 10 to come down and be sworn in for? 11 A. Police officer. 12 Q. Did you accept the offer? 13 A. Yes. 14 Q. On the spot, or did you have to 15 call him back and say yes, I accept? 16 A. No, I told him I would come down. 17 Q. What title was he actually 18 offering you a job as? 19 A. Police officer. 20 Q. Was it full-time police officer, 21 seasonal, part-time or some other title? 22 A. Seasonal. 23 Q. That was the civil service 24 classification of the job that was being 25 offered to you?</p>	<p style="text-align: right;">Page 153</p> <p>1 Cherry 2 A. Yes. 3 Q. What is that? 4 A. Probably the -- you signed a book 5 at the Village office when you got sworn in. 6 Q. Were any other police officers 7 sworn in at the same time as you or the same 8 day as you? 9 A. I don't believe so. 10 Q. Who swore you in as a seasonal 11 police officer at Ocean Beach? 12 A. I believe it was Mary Minerva, the 13 Village Administrator. 14 Q. How long did that process take? 15 A. It took about five minutes. 16 Q. You actually went down to Ocean 17 Beach to do that? 18 A. Yes. 19 Q. Where was the ceremony or the 20 swearing in, where did it take place? 21 A. Village office. 22 Q. Was anyone else there other than 23 you and Ms. Minerva? 24 A. I believe Sergeant Hesse was 25 there.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 40 of 122

<p>1 Cherry</p> <p>2 Q. Anyone else?</p> <p>3 A. Not that I know of.</p> <p>4 Q. Had you known Ms. Minerva prior to that swearing in?</p> <p>5 A. No.</p> <p>6 Q. After the swearing in had you had any encounters or correspondence with Ms. Minerva?</p> <p>7 A. Nothing official, no. I mean I run into her, going to take -- going into the Village hall and stop in to see her, but nothing official or anything like that, say hello.</p> <p>8 Q. You would say hello to her?</p> <p>9 A. Yes.</p> <p>10 Q. She would respond?</p> <p>11 A. Yes.</p> <p>12 Q. You knew who she was?</p> <p>13 A. Yes. She was the Village administrator in charge of every day operations of the Village.</p> <p>14 Q. Did you ever have any correspondence or encounters with Mayor Rogers?</p>	<p>Page 154</p> <p>1 Cherry</p> <p>2 happen?</p> <p>3 A. Maybe a dozen times. You see her walking down the street, good morning mayor, something like that. There was no correspondence at all between me and her.</p> <p>4 Q. When you were hired she was the current mayor at the time?</p> <p>5 A. Yes, I believe so.</p> <p>6 Q. Do you know whether she held any title with the Police Department?</p> <p>7 A. No. I don't know one way or the other.</p> <p>8 Q. Do you know whether the Village of Ocean Beach had a police commissioner?</p> <p>9 A. Not to my knowledge.</p> <p>10 Q. Did you ever see any village letterhead at the time that you worked there?</p> <p>11 A. Village letterhead.</p> <p>12 Q. Yes. Not Police Department letterhead, but Village of Ocean Beach letterhead?</p> <p>13 A. I don't think so, no.</p> <p>14 Q. You don't recall seeing letterhead that says Natalie Rogers, Mayor/Police</p>
<p>1 Cherry</p> <p>2 A. Other than to say that I met her also, and I was introduced to her, and just to say hello. Nothing official. She would come into the station house occasionally.</p> <p>3 Q. When were you introduced to her?</p> <p>4 A. Sometime after I got employed by the Village in 2004.</p> <p>5 Q. Was it some kind of official introduction?</p> <p>6 A. No. I just met her on the street, I was introduced by one of the other officers, or she came into the station house and I was introduced to her. There was no formal introduction.</p> <p>7 Q. How many encounters or correspondence did you have with her?</p> <p>8 A. I had no correspondence. She would come into the station house occasionally if there was something going on in the Village, if we had a power outage she would come in to find out what was going on. Other than that if I saw her in the street I would acknowledge her and say hello.</p> <p>9 Q. About how many times did that</p>	<p>Page 155</p> <p>1 Cherry</p> <p>2 Commissioner?</p> <p>3 A. No.</p> <p>4 Q. When did you first actually have your first tour as a police officer at the Village of Ocean Beach?</p> <p>5 A. It had to be sometime in May of 2004.</p> <p>6 Q. Was there a departmental meeting leading into the season in 2004?</p> <p>7 A. Yes, I believe there was.</p> <p>8 Q. When did that take place?</p> <p>9 A. I am not quite sure of the exact date.</p> <p>10 Q. Do you recall what month it was held in?</p> <p>11 A. It is usually in April. I am not sure if the 2004 was in April or what the date on that was, but I remember being in a meeting.</p> <p>12 Q. What is the purpose of the departmental meeting?</p> <p>13 A. I guess --</p> <p>14 MR. NOVIKOFF: Objection. You can answer.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 41 of 122

<p>1 Cherry</p> <p>2 A. I wasn't sure the first year, but 3 just the guys get together, check the 4 equipment, anything new in the Village that is 5 going on that we should know about.</p> <p>6 Q. In '04 who ran the departmental 7 meeting?</p> <p>8 A. I believe it was Chief Paradiso.</p> <p>9 Q. How about in '05 who ran the 10 departmental meeting?</p> <p>11 A. Again I believe it was Chief 12 Paradiso. To the best of my recollection it 13 was Chief Paradiso.</p> <p>14 Q. You attended in '05 as well?</p> <p>15 A. Yes.</p> <p>16 Q. How about in '06?</p> <p>17 A. I think that was George Hesse.</p> <p>18 Q. You attended in '06?</p> <p>19 A. Yes.</p> <p>20 Q. How about in '07 who ran it?</p> <p>21 A. George Hesse.</p> <p>22 Q. Did you attend in '07?</p> <p>23 A. Yes.</p> <p>24 Q. How about in '08, who ran it?</p> <p>25 A. Chief Hesse.</p>	<p>Page 158</p> <p>1 Cherry</p> <p>2 Q. You actually issued them or that 3 was part of your job?</p> <p>4 A. I actually issued them.</p> <p>5 Q. Do you remember how many you 6 issued in '04?</p> <p>7 A. Two.</p> <p>8 Q. How about '05?</p> <p>9 A. I wasn't a police officer in '05, 10 I was a dispatcher from season of 2005 to 11 current season 2008.</p> <p>12 Q. So you were a police officer for 13 only one season?</p> <p>14 A. That is correct.</p> <p>15 Q. And you testified that you issued 16 two summonses?</p> <p>17 A. Yes. To the best of my 18 recollection.</p> <p>19 Q. Have you ever seen a job 20 description of seasonal police officer prior 21 to working there?</p> <p>22 A. I don't believe so.</p> <p>23 Q. While you were working there did 24 you ever see a job description of a seasonal 25 police officer?</p>
<p>Page 159</p> <p>1 Cherry</p> <p>2 Q. And you attended as well in '08?</p> <p>3 A. Yes.</p> <p>4 Q. How did you learn that there was a 5 departmental meeting in '04?</p> <p>6 A. We were sent a letter.</p> <p>7 Q. Were you sent a letter each year?</p> <p>8 A. Yes.</p> <p>9 Q. For the departmental meeting?</p> <p>10 A. I am not sure about the first 11 year, but every year after that we got a 12 letter saying when the meeting was, usually a 13 month or so in advance, particular day, 14 usually a Sunday.</p> <p>15 Q. What were your duties as a 16 seasonal police officer in Ocean Beach?</p> <p>17 A. Basically patrol. Issue summonses 18 when necessary. Handle aided cases and 19 medical emergencies. Crowd control. Normal 20 patrol function. Enforce ordinances, New York 21 State laws and Village ordinances.</p> <p>22 Q. Did you issue any summonses when 23 you were a seasonal police officer for Ocean 24 Beach?</p> <p>25 A. Yes.</p>	<p>Page 161</p> <p>1 Cherry</p> <p>2 A. I don't believe so.</p> <p>3 MR. GOODSTADT: Would you mark 4 this document as Cherry Exhibit 4, Police 5 Officer Part-Time/Seasonal.</p> <p>6 MR. NOVIKOFF: This doesn't have a 7 Bates stamp number on.</p> <p>8 MR. GOODSTADT: I believe it was 9 produced by the County without a Bates 10 stamp on it, or it was referred to in one 11 of their responses, a web-site.</p> <p>12 MR. NOVIKOFF: That is fine.</p> <p>13 MR. GOODSTADT: Either I pulled it 14 off the web or they produced without a 15 number.</p> <p>16 MR. NOVIKOFF: So this is Cherry 17 Exhibit 4?</p> <p>18 MR. CONNOLLY: I believe at an 19 earlier deposition you indicated that it 20 was produced by the County without a 21 Bates number.</p> <p>22 MR. NOVIKOFF: So it is Cherry 23 Exhibit 4.</p> <p>24 (Cherry Exhibit 4, Police Officer 25 Part-Time/Seasonal, marked for</p>

41 (Pages 158 to 161)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 42 of 122

<p style="text-align: right;">Page 162</p> <p>1 Cherry 2 identification, as of this date.) 3 Q. I placed in front of Mr. Cherry 4 what is now marked as Cherry Exhibit 4, a 5 two-page Exhibit, not Bates stamped, but 6 entitled Police Officer Part-Time/Seasonal. 7 It has the number of 5001 at the top of both 8 pages.</p> <p>9 Have you ever seen the document 10 that has been marked as Cherry Exhibit 4?</p> <p>11 MR. NOVIKOFF: If you need to read 12 the document to answer that question, go 13 ahead.</p> <p>14 A. Let me --</p> <p>15 Q. Go ahead, take your time.</p> <p>16 A. Okay.</p> <p>17 Q. Have you ever seen the document 18 marked as Cherry Exhibit 4?</p> <p>19 A. No.</p> <p>20 Q. I want to focus your attention on 21 the necessary special requirements section?</p> <p>22 A. Yes.</p> <p>23 Q. Sir, is it your testimony that at 24 the time that you were a police officer in the 25 Village of Ocean Beach that you didn't know</p>	<p style="text-align: right;">Page 164</p> <p>1 Cherry 2 police officer in Ocean Beach? 3 MR. NOVIKOFF: Objection. 4 A. It is difficult for me to answer. 5 I don't know if this was in effect when I 6 had -- in 2004. If it was not in effect and I 7 didn't know if their was a requirement. I 8 never saw this, I didn't know of any of these 9 requirements.</p> <p>10 Q. My question is -- I just note for 11 the record that it is dated April 5, 2004, 12 although I don't know if that is a 13 requirement --</p> <p>14 MR. NOVIKOFF: The document will 15 speak no itself.</p> <p>16 MR. GOODSTADT: It will.</p> <p>17 Q. My question was whether at any 18 time that you were a police officer were you 19 aware of a requirement as set forth in point, 20 I think we are up to 5?</p> <p>21 MR. NOVIKOFF: Objection. 22 A. No.</p> <p>23 Q. Same question with point 6, any 24 time that you were a police officer with the 25 Village of Ocean Beach did you know of a</p>
<p style="text-align: right;">Page 163</p> <p>1 Cherry 2 that number 4 listed under there was a 3 requirement?</p> <p>4 MR. NOVIKOFF: Objection. Asked 5 and answered. You can answer again.</p> <p>6 A. Can I ask a question?</p> <p>7 Q. Sure.</p> <p>8 A. When did this take effect?</p> <p>9 Q. The question is not when it took 10 effect or didn't, my question to you, at the 11 time that you worked as an Ocean Beach police 12 officer did you know of a requirement that is 13 set forth in point 4?</p> <p>14 MR. NOVIKOFF: Objection. Asked 15 and answered. You can answer.</p> <p>16 A. Okay, could you repeat the</p> <p>17 question.</p> <p>18 (Record read.)</p> <p>19 A. Point 4, I didn't know that was a</p> <p>20 requirement when I took -- when I applied in</p> <p>21 2004.</p> <p>22 Q. How about point 5, did you know if 23 that was a requirement at the time that you 24 were a police officer; not at the time that 25 you applied, but any time when you were a</p>	<p style="text-align: right;">Page 165</p> <p>1 Cherry 2 requirement set forth in point 6? 3 MR. NOVIKOFF: Same objection. 4 A. No.</p> <p>5 Q. How about point 9, at any point 6 when you were a police officer with the 7 Village of Ocean Beach did you know of a 8 requirement set forth in point 9 at the bottom 9 of the first page?</p> <p>10 MR. NOVIKOFF: Objection. 11 A. No.</p> <p>12 Q. Sir, I believe you testified 13 before that you knew that you couldn't just go 14 from the Nassau County Police Department to 15 the Suffolk County Police Department; correct?</p> <p>16 MR. NOVIKOFF: Objection. You can 17 answer.</p> <p>18 A. Correct.</p> <p>19 Q. Did you believe that you could 20 just go from the Nassau County Police 21 Department to a village police department in 22 Suffolk County?</p> <p>23 MR. NOVIKOFF: Objection. 24 A. I didn't know. I was hired so I 25 assumed that I was, similar to the State Park</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 43 of 122

Page 166	Page 168
<p>1 Cherry</p> <p>2 Police, because I went from Nassau to the</p> <p>3 State Park Police, which covered Nassau and</p> <p>4 Suffolk, and I was under the impression, you</p> <p>5 know, the similar situation with Ocean Beach,</p> <p>6 I thought they hired me based on my</p> <p>7 qualifications as a police officer. I didn't</p> <p>8 realize there was Suffolk County requirements</p> <p>9 prior to that.</p> <p>10 Q. Did you know that the Village of</p> <p>11 Ocean Beach Police Department fell under the</p> <p>12 jurisdiction of the Suffolk County Civil</p> <p>13 Service Department?</p> <p>14 MR. NOVIKOFF: Objection.</p> <p>15 A. I didn't know at that time. I</p> <p>16 mean I didn't know if they could hire on their</p> <p>17 own.</p> <p>18 Q. How about when you were an</p> <p>19 employee there, did you know that the Ocean</p> <p>20 Beach Police Department fell under the</p> <p>21 jurisdiction of the Suffolk County Civil</p> <p>22 Service?</p> <p>23 MR. NOVIKOFF: Objection, you can</p> <p>24 answer.</p> <p>25 A. I found out later on when I was</p>	<p>1 Cherry</p> <p>2 you could go work for a village in Suffolk</p> <p>3 County Police Department or in a village in</p> <p>4 Suffolk County while you were at Nassau?</p> <p>5 MR. NOVIKOFF: Objection.</p> <p>6 A. While I was at Nassau?</p> <p>7 Q. Yes?</p> <p>8 A. A Suffolk County village?</p> <p>9 Q. Yes.</p> <p>10 A. I didn't know.</p> <p>11 MR. GOODSTADT: Would you mark as</p> <p>12 Cherry Exhibit 5, copy of summons.</p> <p>13 (Cherry Exhibit 5, three-page</p> <p>14 exhibit, Bates stamp numbers 11690, 11754</p> <p>15 and 11628, marked for identification, as</p> <p>16 of this date.)</p> <p>17 Q. I placed in front of Mr. Cherry</p> <p>18 what has been marked as Cherry Exhibit 5, a</p> <p>19 three-page exhibit, Bates stamp numbers are</p> <p>20 11690, 11754 and 11628.</p> <p>21 Mr. Cherry, I want you to focus on</p> <p>22 the page that is Bates stamped 11690?</p> <p>23 A. Yes.</p> <p>24 Q. Do you see that?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">Page 167</p>	<p style="text-align: center;">Page 169</p>
<p>1 Cherry</p> <p>2 employed that the civil service, when there</p> <p>3 was some question about whether we were going</p> <p>4 to get a waiver or not. I said a waiver for</p> <p>5 what. He said to be a police officer.</p> <p>6 Q. When did that happen?</p> <p>7 A. That was sometime after I was</p> <p>8 employed.</p> <p>9 Q. When?</p> <p>10 A. The exact date, sometime in 2004,</p> <p>11 the end of 2004.</p> <p>12 Q. At the end of the season 2004 or</p> <p>13 the end of the calendar year 2004?</p> <p>14 A. Towards the end of the season</p> <p>15 2004.</p> <p>16 Q. But prior to the end of the season</p> <p>17 2004 and in fact when you were still with</p> <p>18 Nassau County you knew that you couldn't just</p> <p>19 go work for Suffolk County; correct?</p> <p>20 MR. NOVIKOFF: Objection. You can</p> <p>21 answer.</p> <p>22 A. The Suffolk County Police, I knew</p> <p>23 that, that is correct.</p> <p>24 Q. Just so I am clear for the record,</p> <p>25 your testimony is that you didn't know whether</p>	<p>1 Cherry</p> <p>2 Q. If you look at the, two separate</p> <p>3 summonses here, do you see that?</p> <p>4 A. Yes much.</p> <p>5 Q. These are summonses?</p> <p>6 A. Yes.</p> <p>7 Q. The one on the list, if you look</p> <p>8 on the bottom you see a signature there over</p> <p>9 the word complainant?</p> <p>10 A. Yes.</p> <p>11 Q. Is that your signature?</p> <p>12 A. Yes.</p> <p>13 Q. And it is dated July 24, 2004?</p> <p>14 A. Yes.</p> <p>15 Q. Is this one of the summonses that</p> <p>16 you testified to that you filled out?</p> <p>17 A. No, it is not one of the summonses</p> <p>18 that I was talking about. This was a summons</p> <p>19 that was issued to David Butcher on an</p> <p>20 appearance on a charge of petit larceny.</p> <p>21 Q. I just want to correct the record,</p> <p>22 the date of the actual summons is 7/18, the</p> <p>23 appearance date is July 24th, I misstated that</p> <p>24 for the record.</p> <p>25 A. Okay.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 44 of 122

Page 170	Page 172
1 Cherry	1 Cherry
2 Q. This is a different summons than	2 A. At the front desk.
3 what you were testifying to before?	3 Q. At the Police Department?
4 MR. NOVIKOFF: Objection. You can	4 A. Yes.
5 answer.	5 Q. Was that box locked?
6 A. Right. It is a summons, but I	6 A. Yes.
7 said two. One was for I think riding a bike,	7 Q. Do you know who had the key?
8 and the other one was for open alcohol. This	8 A. I believe the chief had the key, I
9 one was for a petit larceny charge. So that	9 can't say for sure it was locked.
10 would be additional summons that I wrote. But	10 Q. So you don't know one way or the
11 yes, I did write it.	11 other if it was locked?
12 Q. If you look down at the bottom	12 A. Yes. Not sure. I don't know for
13 next to your signature, it says PO/426?	13 sure.
14 A. Yes.	14 Q. Do you know whether there was a
15 Q. What is that?	15 lock on the box?
16 A. That is my rank and my shield	16 A. There was a hasp on the box for a
17 number.	17 lock.
18 Q. If you look at the bottom line it	18 Q. Did you ever see the box locked?
19 says bail amount, a hundred. Bail receipt	19 A. I am not sure.
20 number 92890. Do you see that?	20 Q. Did you ever see the box unlocked?
21 A. Yes.	21 A. Closed and unlocked, yes.
22 Q. What is that?	22 Q. Did you in fact place the hundred
23 A. That is a receipt issued when a	23 dollars cash into the box?
24 person gives bail, you give him a receipt for	24 A. Yes.
25 the amount of money that he presented for	25 Q. You didn't lock it?
1 Cherry	1 Cherry
2 bail.	2 A. Yes.
3 Q. This person gave to you a hundred	3 Q. So it was unlocked when you did
4 dollars bail?	4 it?
5 A. Gave to the Police Department. It	5 A. I don't know if it was locked or
6 was attached to the summons and sent to court.	6 not, I don't remember.
7 Q. Did this guy actually give you a	7 Q. Is there like a slot on the top
8 hundred dollars?	8 where you put it in?
9 A. Yes.	9 A. Yes.
10 Q. He handed it to you?	10 Q. So you don't have to actually open
11 A. Yes.	11 the box to put it in?
12 Q. Check or cash?	12 A. Correct.
13 A. Cash.	13 Q. Do you recall whether you opened
14 Q. What did you do with that money?	14 it to put it in, or did you drop it in the
15 A. That money was attached to the	15 slot?
16 summons and forwarded to the court.	16 A. I put it in the slot, but I don't
17 Q. What do you mean by attached,	17 recall specifically this summons, whether I --
18 stapled or something like that?	18 I usually put it right in the slot.
19 A. Clipped.	19 Q. When you say usually do it, how
20 Q. Paper clip?	20 many times have you put money in the slot?
21 A. Yes. Put in a secure box or a	21 A. Summons go in the slot, and if
22 box.	22 there is bail attached to the summons it goes
23 Q. What secure box?	23 with the summons.
24 A. Summons box.	24 Q. So at most it happened three times
25 Q. Where was that summons box?	25 or I should say --

44 (Pages 170 to 173)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 45 of 122

<p>1 Cherry</p> <p>2 A. I didn't necessarily put them in 3 the box. I didn't -- the person who issued 4 the summons didn't actually put it in the 5 desk. Usually a desk officer would certify 6 the summons and put the summons in the box.</p> <p>7 Q. Is that what happened with the 8 summons on 11690?</p> <p>9 A. I don't recall exactly what 10 happened. But the bail was for the summons.</p> <p>11 Q. If you turn to 11754?</p> <p>12 A. Yes.</p> <p>13 Q. The summons on the right?</p> <p>14 A. Yes.</p> <p>15 Q. Page 2 of the exhibit?</p> <p>16 A. Okay.</p> <p>17 Q. The summons on the right?</p> <p>18 A. Yes.</p> <p>19 Q. Is that one of the two summonses 20 that you testified to before?</p> <p>21 A. Yes.</p> <p>22 Q. If you look at the bottom above 23 the line that says complainant, is that your 24 signature?</p> <p>25 A. That is correct.</p>	<p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 Q. Is that another way that you sign 4 your name?</p> <p>5 A. Yes.</p> <p>6 Q. Again it is PO/426?</p> <p>7 A. Yes.</p> <p>8 Q. That was your shield number?</p> <p>9 A. Yes.</p> <p>10 Q. Was there bail money attached to 11 this summons?</p> <p>12 A. No.</p> <p>13 Q. What was this summons for?</p> <p>14 A. Open alcohol.</p> <p>15 Q. Other than for the three summonses 16 that were marked as Cherry Exhibit 5, did you 17 write any other summonses while you were 18 employed by the Village of Ocean Beach?</p> <p>19 MR. NOVIKOFF: Objection.</p> <p>20 A. These were the only two or three 21 that I can recall.</p> <p>22 Q. You issued them as a police 23 officer?</p> <p>24 A. Yes.</p> <p>25 Q. Did you make any arrests while you</p>
<p>1 Cherry</p> <p>2 Q. Did you ever generally sign your 3 name PJ Cherry like it is on 11754, or Patrick 4 J. Cherry like it is on 11690?</p> <p>5 A. I signed both ways.</p> <p>6 Q. What was the summons for?</p> <p>7 A. The summons was for riding a bike 8 during the restricted hours.</p> <p>9 Q. Was there any bail money attached 10 to this summons?</p> <p>11 A. No.</p> <p>12 Q. If you look at the third page of 13 this exhibit which is Bates number 11628, and 14 do you recognize this summons?</p> <p>15 A. Yes.</p> <p>16 Q. Is this the summons that you 17 filled out?</p> <p>18 A. Yes, it is.</p> <p>19 Q. Is this the other summons that you 20 testified to before?</p> <p>21 A. Yes.</p> <p>22 Q. If you look above the line that 23 says complainant, do you see the signature?</p> <p>24 A. Yes.</p> <p>25 Q. P. Cherry?</p>	<p>1 Cherry</p> <p>2 were employed by the Village of Ocean Beach?</p> <p>3 A. Yes, I believe the first summons 4 involved an arrest situation. He was arrested 5 and issued a summons to appear in court.</p> <p>6 Q. Did you make any other arrests 7 while you were a police officer of the Village 8 of Ocean Beach?</p> <p>9 A. I don't believe so.</p> <p>10 Q. I believe you said there came a 11 time where you were no longer employed as a 12 police officer; is that correct?</p> <p>13 A. That is correct.</p> <p>14 Q. When was that?</p> <p>15 A. May 2005 to the present, to the 16 end of 2008.</p> <p>17 MR. GOODSTADT: Would you mark 18 this document as Cherry Exhibit 6, 19 Incorporated Village of Ocean Beach list. 20 (Cherry Exhibit 6, Incorporated 21 Village of Ocean Beach list, marked for 22 identification, as of this date.)</p> <p>23 Q. I placed in front of Mr. Cherry 24 what has now been marked Exhibit 6, one-page 25 document that bears the Bates number 234.</p>

45 (Pages 174 to 177)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 46 of 122

<p style="text-align: right;">Page 178</p> <p>1 Cherry</p> <p>2 Mr. Cherry, have you ever seen the document 3 that is Bates numbered 234?</p> <p>4 A. No.</p> <p>5 Q. Have you ever seen any document in 6 this form?</p> <p>7 A. No.</p> <p>8 Q. Please look down next to your name 9 on this list, you see where your name appears, 10 Cherry, Patrick?</p> <p>11 A. Yes, I do.</p> <p>12 Q. Do you know what the RS stands 13 for?</p> <p>14 A. No.</p> <p>15 Q. If you look across, that is a 16 Social Security number; is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. The title is police officer, do 19 you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Is that the wage that you were 22 paid in '04?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. And the date there is 9/28/04, do 25 you see that?</p>	<p style="text-align: right;">Page 180</p> <p>1 Cherry</p> <p>2 you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know what that stands for?</p> <p>5 A. No, I don't.</p> <p>6 Q. Has anyone ever told you that you 7 were disapproved for something at Ocean Beach?</p> <p>8 A. No.</p> <p>9 Q. You testified that there was a 10 point in time in 2005 that I believe you said 11 it was May, that you no longer were employed 12 as a police officer at Ocean Beach; is that 13 correct?</p> <p>14 MR. NOVIKOFF: Objection.</p> <p>15 A. Yes, I believe May 1st I resigned 16 as a police officer.</p> <p>17 Q. Why did you resign as a police 18 officer?</p> <p>19 A. I was advised I have to go through 20 the Suffolk County test, you know, the 21 physical agility and so on and so forth. I 22 had a health issue in December of that year 23 and I decided not to stay on as a police 24 officer.</p> <p>25 Q. Who advised you that you have to</p>
<p style="text-align: right;">Page 179</p> <p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 Q. That was during the period that 4 you were a police officer in Ocean Beach?</p> <p>5 A. I may have ended -- it may have 6 been after I left for that season, I am not 7 sure exactly the date that I left in 2004 for 8 the season. But I believe it is after the 9 date that I left. I am not sure. I don't 10 know what date was my last day.</p> <p>11 Q. So after the season ended did you 12 still hold your shield?</p> <p>13 A. Yes.</p> <p>14 Q. Did you still maintain your 15 weapon?</p> <p>16 A. Yes.</p> <p>17 Q. So were you still a police officer 18 with Ocean Beach at the time?</p> <p>19 A. Yes.</p> <p>20 Q. So as of 9/28/04 you were still 21 employed as a police officer?</p> <p>22 A. I was employed, but not working, 23 yes, that is correct.</p> <p>24 Q. You see next to that there is a 25 handwritten notation that says disapproved, do</p>	<p style="text-align: right;">Page 181</p> <p>1 Cherry</p> <p>2 go through the Suffolk County tests?</p> <p>3 A. I believe Chief Hesse did and I 4 got letters for scheduling appointments to 5 take the various tests. And I decided I 6 wasn't going to go back as a police officer.</p> <p>7 Q. When was the first time that you 8 were advised that you needed to go through the 9 Suffolk County test?</p> <p>10 MR. NOVIKOFF: Objection. Asked 11 and answered. You can answer.</p> <p>12 A. I don't recall.</p> <p>13 Q. Do you recall what month it was?</p> <p>14 A. No.</p> <p>15 Q. Do you recall --</p> <p>16 A. Sometime after the season was over 17 he told me I have to.</p> <p>18 Q. At some point between the end of 19 the season '04 and May 1, '05?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall which calendar year 22 it was in; was it in '04 or '05?</p> <p>23 A. I believe the end of '04, the end 24 of the season.</p> <p>25 Q. So some point between September of</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 47 of 122

<p>Page 182</p> <p>1 Cherry 2 '04 and December of '04 is when? 3 A. I believe so. To the best of my 4 recollection. 5 Q. Did you first learn of it through 6 Chief Hesse or Deputy Chief Hesse or Sergeant 7 Hesse, or did you first learn of it through 8 those letters that you got? 9 A. I got some letters -- I am not 10 sure. George may have told me first and then 11 I got the letters, or the letters may have 12 spurred a phone call, what is the story, what 13 is going on. But there came a point where I 14 decided not to go back. 15 Q. What tests are you referring to? 16 A. The physical agility, that was the 17 first time I think I got the letter. I don't 18 recall, there may have been a letter for a -- 19 just physical agility. I rescheduled and I 20 decided I was not going to do it and I let 21 civil service know. 22 Q. Did George Hesse inform you when 23 you first learned from him by phone or in 24 person? 25 A. Probably by phone, I am not sure</p>	<p>Page 184</p> <p>1 Cherry 2 you? 3 A. Not in the conversation -- not 4 during the conversation that we had, he didn't 5 give me any indication of that. 6 MR. GOODSTADT: Let's take a 7 break. 8 THE VIDEOGRAPHER: The time is 9 12:50. Off the record. 10 (Lunch recess taken.) 11 (Time noted: 12:50 p.m.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 183</p> <p>1 Cherry 2 exactly how. I may have called him to find 3 out what is going on, because he is over on 4 Ocean Beach, it is not easy to go over there, 5 so it is usually a phone conversation. 6 Q. Do you recall what he said during 7 the phone conversation? 8 A. I believe he said that civil 9 service is going to require that the police 10 officers who are working there, who were not 11 former -- who were former police officers have 12 to go through a whole Suffolk County Civil 13 Service process. 14 Q. Did he tell you this was a new 15 requirement? 16 MR. NOVIKOFF: Objection. 17 Q. From Suffolk County? 18 A. He didn't say it was a new 19 requirement, he just informed us that we have 20 to go through the civil service process, he 21 didn't say anything about it being a new or 22 not new. 23 Q. Did he indicate one way or the 24 other whether he knew about those requirements 25 prior to the time that he disclosed them to</p>	<p>Page 185</p> <p>1 Cherry 2 AFTERNOON SESSION 3 (Time noted: 1:38 p.m.) 4 PATRICK JOHN CHERRY, 5 resumed and testified as follows: 6 EXAMINATION BY (Cont'd.) 7 MR. GOODSTADT: 8 THE VIDEOGRAPHER: The time is 9 1:38, we are back on the record. 10 Q. Before we broke for lunch 11 Mr. Cherry I believe that we were discussing 12 when you learned about the requirements for 13 Suffolk County Civil Service, do you recall 14 that? 15 A. Yes. 16 Q. I believe you testified before 17 about somebody asking whether you were going 18 to get a waiver; is that correct? 19 MR. NOVIKOFF: Objection. Like I 20 said you can answer everything unless I 21 tell you not to. 22 A. Okay. Yes. 23 Q. What were you referring to when 24 you said that? 25 A. A waiver for us to work as police</p>

47 (Pages 182 to 185)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 48 of 122

<p style="text-align: right;">Page 186</p> <p>1 Cherry 2 officers.</p> <p>Q. Who was inquiring whether you were 3 going to get a waiver?</p> <p>4 A. Somebody mentioned it to me that 5 they were going to try to get a waiver.</p> <p>Q. Do you remember who that was?</p> <p>6 A. I believe it was Chief Hesse.</p> <p>Q. Do you know when he asked you 7 about that?</p> <p>8 A. No. He didn't ask me, he sort of 9 mentioned that he was trying to get a waiver.</p> <p>Q. He mentioned that he was trying to 10 get a waiver for you?</p> <p>11 A. Yes.</p> <p>Q. Do you know what efforts he took 12 to get that waiver?</p> <p>13 A. No.</p> <p>Q. Do you know when he was taking 14 those efforts to try to get a waiver?</p> <p>15 A. No.</p> <p>Q. Do you know whether there is such 16 a thing as a waiver?</p> <p>17 A. I don't know.</p> <p>Q. Did there come a point in time</p>	<p style="text-align: right;">Page 188</p> <p>1 Cherry 2 or the attempts of George Hesse getting you a 3 waiver?</p> <p>4 MR. NOVIKOFF: Objection.</p> <p>5 A. I never heard anything about it.</p> <p>Q. Did you ever follow up with him?</p> <p>6 A. No.</p> <p>Q. Did anyone ever tell you that you 7 could no longer work as a police officer 8 unless you got these tests or certifications 9 from Suffolk County Civil Service?</p> <p>10 A. Yes. I think when he said we had 11 to pass all the tests to stay on the job.</p> <p>Q. When did you learn that, you had 12 to pass a test to stay on the job?</p> <p>13 A. When did I hear that; when I got 14 the letters from civil service I inquired and 15 they -- I wanted to cancel a physical, an 16 agility tests. I said, I asked them, I said 17 what are the requirements. He said you have 18 to pass every phase of the examinations.</p> <p>Q. How many letters did you get from 19 civil service?</p> <p>20 A. I think I got two or three about 21 civil service requirements, taking the exams,</p>
<p style="text-align: right;">Page 187</p> <p>1 Cherry 2 where -- strike that.</p> <p>Do you know who Officer Dyer, 3 D-Y-E-R?</p> <p>4 A. Yes.</p> <p>Q. Who is Officer Dyer?</p> <p>5 A. John was an officer who came on, I 6 believe it was the same year that I did in 7 2004.</p> <p>Q. Did Officer Dyer, did he have the 8 same issues with respect to the certifications 9 and tests?</p> <p>10 A. I believe so.</p> <p>11 MR. NOVIKOFF: Objection.</p> <p>Q. Did you ever discuss the issue 12 with him?</p> <p>13 A. I don't believe so.</p> <p>Q. Did you ever hear him mention the 14 issue?</p> <p>15 A. No.</p> <p>Q. You never heard him talking about 16 it in the police station?</p> <p>17 MR. NOVIKOFF: Objection.</p> <p>18 A. I don't recall, no.</p> <p>Q. Whatever happened with the waiver</p>	<p style="text-align: right;">Page 189</p> <p>1 Cherry 2 scheduling of exams.</p> <p>Q. You don't recall when the first 3 one came?</p> <p>4 A. No, it was sometime the end of 5 the -- after the -- the end of the 2004 6 season.</p> <p>Q. So it was sometime between the end 7 of the season and the end of the calendar year 8 2004?</p> <p>9 A. Yes.</p> <p>Q. Did you keep copies of those 10 letters?</p> <p>11 A. No.</p> <p>Q. What did you do with them?</p> <p>12 A. I eventually threw them away.</p> <p>Q. Did you ever speak to anyone at 13 civil service about the letters or the 14 requirements?</p> <p>15 A. I called there to let them know I 16 wasn't going to make an exam. Other than that 17 I didn't speak to anybody specifically about 18 the -- what you had to do.</p> <p>Q. So your exams were actually 19 scheduled?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 49 of 122

<p style="text-align: right;">Page 190</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 A. Scheduled, yes. 4 Q. Which exam was scheduled? 5 A. The physical agility. 6 Q. The other exam was scheduled? 7 A. No, I think -- well, no. 8 Q. Did you try to schedule any other exams? 9 A. No. 10 Q. Did they try to schedule them with you? 11 A. No. 12 Q. And did you call them to schedule the physical agility or did they send you the days? 13 A. They sent me a date and they asked if I wasn't going to take it, to give them notice, which I did. 14 Q. Why did you decide not to take it? 15 MR. NOVIKOFF: Objection. 16 A. I decided I was not going to pursue it any more, I was going to resign. 17 Q. Why? 18 MR. NOVIKOFF: Objection.</p>	<p style="text-align: right;">Page 192</p> <p>1 Cherry 2 a one-page document bearing Bates stamp 4113. 3 Mr. Cherry, do you recognize the document that has been marked as Cherry Exhibit 7? 4 A. Yes, sir. 5 Q. What is this document? 6 A. It is my resignation letter to Chief Paradiso. 7 Q. Do you recall writing this letter? 8 A. Yes, I do. 9 Q. Did you actually type it? 10 A. Yes. 11 Q. Is that your signature on the bottom of the letter? 12 A. Yes. 13 Q. You want to look down it says: To Chief Edward Paradiso. Do you see that? 14 A. Yes. 15 Q. Why were you submitting it to Chief Edward Paradiso? 16 A. Because he was the chief of the department. 17 Q. Did you give a copy of this letter to anyone else other than Chief Paradiso?</p>
<p style="text-align: right;">Page 191</p> <p>1 Cherry 2 A. Well, I decided to resign. I didn't want to go through the process and like I said before I had some health issues, I didn't want to go further to be a police officer in the Village. 3 Q. If you were not required to take a test would you have stayed on as a police officer in the Village? 4 MR. NOVIKOFF: Objection. 5 A. Probably not. 6 Q. So you were going to resign regardless of whether the civil service issue came up? 7 A. Yes. 8 Q. Had you told anyone that? 9 A. No. 10 MR. GOODSTADT: Would you mark this document as Cherry Exhibit 7, memo dated May 1, 2005. 11 (Cherry Exhibit 7, memo dated May 1, 2005, marked for identification, as of this date.) 12 Q. I place in front of Mr. Cherry what has now been marked as Cherry Exhibit 7,</p>	<p style="text-align: right;">Page 193</p> <p>1 Cherry 2 A. No. 3 Q. Had you spoken to anyone in the department that you were going to resign prior to submitting this? 4 MR. NOVIKOFF: Objection. 5 A. Yes, I believe I advised Sergeant Hesse that I was not going to stay on as a police officer, I was going to resign. 6 Q. When did you advise him of that? 7 A. Sometime prior to May 1st when I submitted the letter. 8 Q. How far prior to May 1st? 9 A. I don't know the exact date. 10 Q. Was it days, weeks, months? 11 A. Probably a month or two prior. 12 Q. So you think it was some point in the first quarter of 2005 that you told him that? 13 A. Yes, that sounds reasonable. 14 Q. You say on the top sentence: Effective immediately I am reluctantly tendering my resignation. Do you see that? 15 A. Yes. 16 Q. Why were you reluctant to tender</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 50 of 122

<p style="text-align: right;">Page 194</p> <p>1 Cherry 2 your resignation? 3 MR. NOVIKOFF: Objection. 4 A. I would rather stay as a police 5 officer, but due to my health concerns and not 6 wanting to go through the process again I 7 decided not to. 8 Q. Just so I understand, did you 9 tender your resignation because of the health 10 concerns, or did you tender your resignation 11 because you didn't want to go through the 12 process? 13 MR. NOVIKOFF: Objection. 14 A. Both. 15 Q. Then the first sentence of the 16 second paragraph it says: It has been a 17 pleasure to have worked for and with you, 18 Sergeant Hesse, and the other members of the 19 department. Do you see that? 20 A. Yes. 21 Q. At the time George Hesse's title 22 was sergeant? 23 A. Yes. 24 MR. NOVIKOFF: Objection. 25 Q. The last sentence of your letter</p>	<p style="text-align: right;">Page 196</p> <p>1 Cherry 2 required to -- for you to pass to get the job 3 of seasonal dispatcher? 4 MR. NOVIKOFF: Objection. 5 A. I don't think there are any test 6 requirements. 7 Q. What were your duties as a 8 dispatcher? 9 A. Answer the telephone. Take 10 complaints. Dispatch the officers to answer 11 the complaints. Make entries in the blotter. 12 Make entries in the computer log provided by 13 the officers on their field reports, put them 14 into the computer. 15 When summonses come in record them 16 in the blotter and file them to be forwarded 17 to court. Information, you know, I get 18 information sent in. Anything that comes 19 through the main desk. 20 Q. Do you carry a weapon? 21 A. No. 22 Q. Do you have a shield as a 23 dispatcher? 24 A. Yes. 25 Q. Do you have a police uniform?</p>
<p style="text-align: right;">Page 195</p> <p>1 Cherry 2 it says: If I can assist the department in 3 another capacity on a part-time basis, please 4 let me know. Do you see that? 5 A. Yes. 6 Q. Did they take you up on that 7 offer? 8 A. Yes. 9 Q. What job did they offer you? 10 A. They asked me if I would stay on 11 as a dispatcher. 12 Q. On a part-time basis? 13 A. Yes. Seasonal dispatcher. 14 Q. Seasonal or part-time? 15 MR. NOVIKOFF: Objection. 16 A. Seasonal. 17 Q. Just so I am clear, dispatcher was 18 the civil service title? 19 MR. NOVIKOFF: Objection. 20 A. Yes. 21 Q. Was it just seasonal dispatcher or 22 emergency services dispatcher? 23 MR. NOVIKOFF: Objection. 24 A. Seasonal dispatcher. 25 Q. Do you know what tests if any are</p>	<p style="text-align: right;">Page 197</p> <p>1 Cherry 2 A. You wear a uniform, it is 3 different from the police uniform. Black 4 shirt and khaki pants. 5 Q. Same shield? 6 A. Similar shield, it says dispatcher 7 on it. 8 Q. What is your shield number? 9 A. 552. 10 Q. As dispatcher do you have the 11 authority to make arrests? 12 A. No. 13 Q. Do you have authority to issue 14 summonses? 15 MR. NOVIKOFF: Objection. 16 A. No. 17 Q. At the time that you were a police 18 officer in Ocean Beach who was your 19 supervisor? 20 MR. NOVIKOFF: Objection. 21 A. Whoever was the senior officer 22 working, either Chief Paradiso or Sergeant 23 Hesse. 24 Q. What tours did you work? 25 A. The first year I worked primarily</p>

50 (Pages 194 to 197)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 51 of 122

<p style="text-align: right;">Page 198</p> <p>1 Cherry 2 nights, 4 to 12, that extended to 4 to 1 a.m. 3 on Saturdays.</p> <p>Q. When you say at first, you are talking about 2004?</p> <p>4 A. That is correct.</p> <p>Q. Did you ever work any other tours other than 4 to 12 and 4 to 1 while you were a police officer in Ocean Beach?</p> <p>5 A. I may have worked a day tour now 6 and then, but primarily 4 to 12's.</p> <p>Q. Who was the senior officer or superior officer on duty during that shift, the 4 to 12 shift?</p> <p>7 A. Who did I work for?</p> <p>Q. Yes.</p> <p>8 A. Whoever happened to be the 9 superior officer that night. Either Chief 10 Hesse or -- Chief Paradiso or Sergeant Hesse.</p> <p>Q. Who was the superior officer generally on that tour, 4 to 12?</p> <p>11 A. Sergeant Hesse.</p> <p>Q. For the entire tour?</p> <p>12 A. Yes.</p> <p>Q. Was there any point that Chief</p>	<p style="text-align: right;">Page 200</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 A. If there was an issue during the 4 tour? 5 Q. Yes. 6 A. Yes, you would go to the officer 7 who was in charge if you had to seek advice 8 from a superior. 9 Q. That is a chain of command, you go to the superior officer who is on duty? 10 MR. NOVIKOFF: Objection. 11 A. Yes. 12 Q. That is what was told to you? 13 MR. NOVIKOFF: Objection. 14 A. Yes. That is what normal 15 procedure would be. 16 Q. Was it told to you that that was the procedure there as well? 17 A. Yes. 18 Q. Who told you that? 19 A. I don't think anybody -- well, you 20 went to the -- if you had a problem I had to 21 go to a superior, you went to the superior 22 officer that is working. 23 MR. NOVIKOFF: Listen to the</p>
<p style="text-align: right;">Page 199</p> <p>1 Cherry 2 Paradiso was the superior officer on the 4 to 3 12 tour when you worked? 4 MR. NOVIKOFF: Objection. 5 A. Occasionally. If the chief wasn't 6 available or on vacation the chief may stay 7 and work later than that, but he was primarily 8 the daytime supervisor. 9 Q. While you were employed as a 10 police officer at Ocean Beach did Chief 11 Paradiso work the 4 to 12 shift other than to 12 go in when Hesse was on vacation? 13 A. Not normally, no. 14 Q. How about at all? 15 A. I would say occasionally he would 16 depending on if the supervisor was needed that 17 night or he stayed late. He was the chief, he 18 could do whatever he wanted to do. 19 Q. So if there was an issue that you 20 wanted to raise with your superior officer 21 or -- strike that. 22 If there was an issue that you 23 wanted to raise with the department would you 24 raise it to your superior officer who was on 25 duty at that time?</p>	<p style="text-align: right;">Page 201</p> <p>1 Cherry 2 question. He is asking specific 3 questions. 4 Q. You believe that was well known 5 throughout the department that that was the 6 process? 7 MR. NOVIKOFF: Objection. 8 A. Yes. 9 Q. I believe you testified that 10 Officer John Dyer was hired as a police 11 officer the same year that you were; is that 12 correct? 13 MR. NOVIKOFF: Objection. 14 A. I believe so, yes. 15 Q. Were there any other police 16 officers who were hired for the first season, 17 for the 2004 season other than for you and 18 Mr. Dyer? 19 MR. NOVIKOFF: Objection. To the 20 extent that he knows you can answer. 21 A. I don't know. 22 Q. How many police officers were 23 employed by the Village of Ocean Beach in the 24 '04 season? 25 A. I don't know the exact number.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 52 of 122

<p style="text-align: right;">Page 202</p> <p>1 Cherry 2 Q. Approximately? 3 MR. NOVIKOFF: Objection. 4 A. I would say approximately 30. 5 Q. How many of those police officers 6 generally worked the 4 to 12 tour? 7 MR. NOVIKOFF: Objection. 8 A. It would depend on the night. 9 Q. Was there a certain group of 10 officers that generally worked the same shift 11 as you? 12 MR. NOVIKOFF: Objection. 13 A. I worked three days, primarily 14 three days a week the first year I believe, 15 and depending on what days you worked it would 16 be different officers every night. It may be 17 the same officer, but some of the same 18 officers may have worked, whoever was 19 available to work in a particular night would 20 be working. It was not the same person -- it 21 was not the same crew every night. 22 Q. Did you generally work the same 23 days each week? 24 A. Yes. 25 Q. What days were those?</p>	<p style="text-align: right;">Page 204</p> <p>1 Cherry 2 Q. Generally George Hesse was the 3 superior officer on duty? 4 A. I would say -- 5 MR. NOVIKOFF: Objection. Wait 6 until the question is over. 7 A. I would say generally George Hesse 8 was the sergeant assigned. 9 Q. Did the Bossetti's work the Friday 10 4 to 12 frequently with you? 11 MR. NOVIKOFF: Objection. 12 A. I remember them working 13 occasionally with me, yes. 14 Q. How about Officer Moeller? 15 MR. NOVIKOFF: Objection. 16 A. I worked with -- anybody you named 17 I worked with, but I can't say exactly what 18 days they worked without having the schedule 19 in front of me. 20 Q. So there was no regular crew that 21 worked either the Friday, Saturday or Sunday 22 tour, 4 to 12, is that your testimony? 23 MR. NOVIKOFF: Objection. 24 A. Not that I can recall, no. 25 Q. The only regular that was on duty</p>
<p style="text-align: right;">Page 203</p> <p>1 Cherry 2 A. If I recall I worked Friday, 3 Saturday and Sunday to the best of my 4 recollection for the 2004 season. 5 Q. I want to go back, you said a 6 couple of times now during the first season, 7 you are referring to the 2004 season? 8 A. Yes. 9 Q. Were there any other seasons that 10 you worked as a police officer for Ocean 11 Beach? 12 A. No, but you are talking about 13 scheduling. 14 Q. I just wanted to be clear? 15 A. Yes, right. 16 Q. Of the Friday -- on the Friday 17 tour, the 4 to 12 tour that I am talking 18 about, who generally were the officers that 19 you worked with on that tour? 20 A. I couldn't say specifically 21 because it was different every night. It was 22 depending on who was available to work, and 23 depending on what the person's schedule was, 24 it would be different people every night. I 25 couldn't say any given date who was working.</p>	<p style="text-align: right;">Page 205</p> <p>1 Cherry 2 during those tours for you that you can recall 3 is George Hesse? 4 MR. NOVIKOFF: Objection. 5 A. Yes. 6 Q. Did you ever socialize with any 7 officers outside of work during that 2004 8 season? 9 A. No. 10 Q. How about did you ever socialize 11 with any officers -- strike that. 12 Did you ever eat meals with those 13 officers during your tour, any officers during 14 your tour? 15 A. Yes. 16 Q. Did you ever go to the Bocce Beach 17 on Sunday night for dinner? 18 A. Yes. 19 Q. How often would you do that? 20 A. Just about every Sunday if we 21 were not -- if it was not busy, usually every 22 Sunday. 23 MR. NOVIKOFF: Are you done with 24 your answer? 25 THE WITNESS: Yes.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 53 of 122

<p style="text-align: right;">Page 206</p> <p>1 Cherry 2 Q. Who did you generally go with on 3 Sundays to the Bocce Beach for dinner? 4 A. It was myself, George Hesse, 5 depending on who was working. Sometimes the 6 Bossetti's, sometimes Officer Moeller. That 7 is all I recall. It was different people, 8 whoever happened to be working, who wanted to 9 join, go over there, they would go with us. 10 Q. And did you eat dinner during your 11 tour? 12 A. Yes. 13 Q. Were you paid for the time that 14 you were eating dinner? 15 A. I believe we had a half hour meal 16 period and yes, sometimes it went over a half 17 hour and we would bring the radio with us, but 18 it was during the tour, yes. 19 Q. Who paid for those dinners? 20 A. We did. 21 Q. Individually? 22 A. Yes, we got the bill and we gave 23 in our share. 24 Q. Did you ever drink any alcohol 25 during those dinners?</p>	<p style="text-align: right;">Page 208</p> <p>1 Cherry 2 Q. How did you learn the radio codes 3 for Suffolk County when you were working in 4 the Village of Ocean Beach as a police 5 officer? 6 MR. NOVIKOFF: Objection. 7 A. There was a card that listed all 8 the radio numbers that was at the front desk 9 or I had a copy of it, and I looked at it. If 10 you had to use a code that you didn't know, 11 you would look at the code and see what code 12 it was. 13 Q. What if you were outside of the 14 station? 15 A. I had one in my summons book also. 16 Q. You carried a copy of the card 17 code? 18 A. Yes. 19 Q. Do you know who alerted civil 20 service to the fact that there were 21 uncertified officers working in Ocean Beach? 22 MR. NOVIKOFF: Objection. 23 A. No. 24 Q. Did you ever hear anybody accuse 25 Tom Snyder of alerting civil service to the</p>
<p style="text-align: right;">Page 207</p> <p>1 Cherry 2 A. No. 3 Q. Do you know if any other officers 4 ever drank any alcohol during those dinners? 5 A. No. 6 Q. You don't know or they didn't 7 drink? 8 MR. NOVIKOFF: Objection. You can 9 answer. 10 A. No, we didn't drink alcohol. 11 Q. I am not asking whether you did, I 12 am asking whether any other officers drank 13 alcohol? 14 MR. NOVIKOFF: Objection. 15 A. I didn't see anybody drink any 16 alcoholic beverages. 17 Q. Sir, are the radio, the police 18 radio codes different in Suffolk County than 19 they are in Nassau County -- strike that. 20 MR. NOVIKOFF: Objection. 21 Q. Back in 2004 were the radio codes 22 in the Police Department in Suffolk County 23 different than they were for Nassau County? 24 MR. NOVIKOFF: Objection. 25 A. Yes.</p>	<p style="text-align: right;">Page 209</p> <p>1 Cherry 2 fact that there were uncertified officers 3 working in Ocean Beach? 4 MR. NOVIKOFF: Objection. 5 A. No. 6 Q. Did you ever hear anybody call Tom 7 Snyder a rat? 8 A. No. 9 MR. NOVIKOFF: Objection. 10 Q. Did you ever hear anyone accuse 11 Frank Fiorillo of notifying civil service to 12 the issue that there were uncertified workers 13 in Ocean Beach? 14 MR. NOVIKOFF: Objection. 15 A. No. 16 Q. Did you ever hear anyone call 17 Frank Fiorillo a rat? 18 MR. NOVIKOFF: Objection. 19 A. No. 20 MR. GOODSTADT: What is the basis? 21 MR. NOVIKOFF: I think it is form. 22 MR. GOODSTADT: What is wrong with 23 the form? 24 MR. NOVIKOFF: I think the form -- 25 MR. GOODSTADT: What about it?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 54 of 122

<p style="text-align: right;">Page 210</p> <p>1 Cherry 2 MR. NOVIKOFF: I believe you are 3 calling for hearsay. I am preserving my 4 objection, I am not speaking, Andrew. 5 Q. Did you ever hear anyone accuse Ed 6 Carter of alerting civil service to the issue 7 that there were uncertified police officers 8 working in Ocean Beach? 9 MR. NOVIKOFF: Objection. 10 A. No. 11 Q. Did you hear anyone call Ed Carter 12 a rat? 13 A. No. 14 Q. Did you ever hear anyone accuse 15 Kevin Lamm of notifying civil service that 16 there were uncertified workers working as 17 police officers at Ocean Beach? 18 A. No. 19 MR. NOVIKOFF: Objection. 20 Q. Did you ever hear anyone call 21 Kevin Lamm a rat? 22 MR. NOVIKOFF: Objection. 23 A. No. 24 Q. Did you ever hear anyone accuse 25 Joe Nofi of alerting civil service to the fact</p>	<p style="text-align: right;">Page 212</p> <p>1 Cherry 2 Q. Were you aware of any other 3 officers who worked as police officers at 4 Ocean Beach who had the same issues about 5 being uncertified? 6 A. I believe the Bossetti's, Richard 7 and Gary. I don't think there was anybody 8 else. Dyer, myself. I can't think of anybody 9 else right now that came over as a police 10 officer that was uncertified. 11 Q. How did you know that John Dyer 12 had the same problem? 13 A. Because he told me he had to take 14 the civil service required tests. 15 Q. Do you know what Dyer did before 16 working at Ocean Beach? 17 A. I believe he was a New York City 18 Police Officer. 19 Q. Do you know whether he knew Hesse 20 prior to coming over to work at Ocean Beach? 21 A. I don't know. 22 Q. How did you learn that the 23 Bossetti's had the same problem about being 24 uncertified as you did? 25 A. Because they had to take the</p>
<p style="text-align: right;">Page 211</p> <p>1 Cherry 2 that there were uncertified police officers 3 working at Ocean Beach? 4 MR. NOVIKOFF: Objection. 5 A. No. 6 Q. Did you ever hear anyone call Joe 7 Nofi a rat? 8 MR. NOVIKOFF: Objection. 9 A. No. 10 Q. Do you know what the term rat 11 means in the terms of a police officer? 12 MR. NOVIKOFF: Objection. 13 A. Yes. 14 Q. What does it mean? 15 A. A guy who accuses another officer 16 of doing something that is against the 17 department. 18 Q. Have you ever called anyone a rat? 19 A. No. 20 Q. I believe you testified that 21 Officer Dyer had the same issues that you did 22 about being uncertified; is that correct? 23 MR. NOVIKOFF: Objection. 24 A. Yes, I believe he did have the 25 same issues.</p>	<p style="text-align: right;">Page 213</p> <p>1 Cherry 2 required civil service test also. 3 Q. I understand they had to take it, 4 I want to know how you learned that they had 5 to take it? 6 MR. NOVIKOFF: Objection. 7 A. They probably told me they had to 8 take it. 9 Q. Do you recall them telling you? 10 A. Yes. They were scheduled to take 11 one. 12 Q. When did you learn that Gary 13 Bossetti was uncertified and had to take those 14 tests? 15 A. Sometime after the 2004 season I 16 think everybody had to take the test, you 17 know, formal police officers who were working 18 there that didn't -- had to take the test. 19 Q. How far after the end of the '04 20 season did you learn that? 21 A. The same time that I found 22 basically, the end of the season, after the 23 end of the season before the 2005 season 24 started. 25 Q. So did Gary Bossetti tell you that</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 55 of 122

<p style="text-align: right;">Page 214</p> <p>1 Cherry 2 he had to take the test? 3 A. I believe it was mentioned that he 4 had to take the test. I don't know if he told 5 me directly that he had to take the test. 6 Q. It was on the phone or in person 7 that he mentioned this to you? 8 A. As I said I don't know if he 9 personally told me or I just heard that he had 10 to take the test, or somebody mentioned it, I 11 don't recall. 12 Q. Did you speak to Gary Bossetti in 13 between the end of the '04 season and the '05 14 season? 15 A. About the tests? 16 Q. At all. 17 A. I probably spoke to him at a 18 Christmas party or something like that. I 19 mean just to say hello. 20 Q. Was there a Christmas party in 21 '04? 22 A. I am not sure. 23 Q. Were there Christmas parties 24 generally at Ocean Beach? 25 A. Yes. We usually got together</p>	<p style="text-align: right;">Page 216</p> <p>1 Cherry 2 Q. Who paid for the Christmas parties 3 that you attended? 4 A. I am not sure. 5 Q. Did you have to pay for any of 6 them? 7 A. Last year I think we chipped in 20 8 bucks a man, something like that, but I am not 9 sure of the prior years. 10 Q. You don't recall chipping in the 11 prior years? 12 MR. NOVIKOFF: Objection. 13 A. No, I don't. 14 Q. Did you ever hear that the Ocean 15 Beach PBA paid for those parties? 16 A. I believe that they possibly did. 17 MR. NOVIKOFF: Let's take a break. 18 One second. I don't have to go off the 19 record. 20 THE VIDEOGRAPHER: The time is 21 2:08. We are off the record. 22 (Recess taken.) 23 THE VIDEOGRAPHER: The time is 24 2:09. We are back on the record. 25 Q. Sir, I think you just testified</p>
<p style="text-align: right;">Page 215</p> <p>1 Cherry 2 around Christmastime. I can't say it was 3 every year. We did do it last year, but I 4 can't say it was every year and I didn't 5 attend every party. 6 Q. Is this a party that is different 7 than the one that you testified to before that 8 happened at Hesse's house and Paradiso's 9 house? 10 A. Yes. 11 Q. Where would the Christmas parties 12 be held? 13 A. They were a restaurant in, that I 14 can recall, a restaurant in Sayville. 15 Q. Was it called the Portly Villager? 16 A. Yes. 17 Q. Do you know who owned that 18 restaurant? 19 A. Mrs. Keglein (phonetic). 20 Q. Is her husband an employee as a 21 police officer in Ocean Beach? 22 A. He was. 23 Q. What years was he employed as a -- 24 A. He was only there -- to the best 25 of my recollection I think it was 2006, 2007.</p>	<p style="text-align: right;">Page 217</p> <p>1 Cherry 2 that you believe that the Ocean Beach PBA may 3 have paid for the Christmas parties, but 4 before you testified that you never heard of 5 an Ocean Beach PBA? 6 MR. NOVIKOFF: Objection. You can 7 answer. 8 A. Yes. 9 Q. How do you reconcile that? 10 A. I was wrong. I am -- as far as I 11 knew we didn't have a PBA. I wasn't a member 12 of the Ocean Beach PBA. I don't know what 13 fund paid for it, but it was -- somebody paid 14 for it. I am not sure who. 15 Q. Why do you think it is possible 16 that the Ocean Beach PBA? 17 MR. NOVIKOFF: Objection. 18 A. As I said I don't know if there 19 was a PBA fund. As far as I know we didn't 20 have a PBA. I wasn't a member of any Ocean 21 Beach PBA. I was not a contributing member. 22 I didn't contribute to it. I didn't pay any 23 dues to a PBA. So I don't know if there is a 24 PBA. 25 Q. Do you know whether Sergeant</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 56 of 122

<p style="text-align: right;">Page 218</p> <p>1 Cherry 2 and/or Chief Hesse ever solicited donations 3 for the PBA? 4 MR. NOVIKOFF: Objection. 5 MR. CONNOLLY: Objection. 6 A. I have no personal knowledge of 7 that. 8 Q. To your knowledge who at Ocean 9 Beach was in charge of insuring compliance 10 with the civil service laws with respect to 11 police officers? 12 MR. NOVIKOFF: Objection. 13 A. I don't know. 14 Q. While you were a police officer at 15 Ocean Beach did you ever receive a handbook, 16 an employee handbook? 17 A. I don't believe so, no. 18 Q. Did you ever receive any 19 performance evaluations? 20 MR. NOVIKOFF: Objection. 21 A. I don't believe so. 22 Q. Did you ever discuss or have any 23 correspondence other than for Cherry 7 with 24 Chief Paradiso about the civil service 25 requirements?</p>	<p style="text-align: right;">Page 220</p> <p>1 Cherry 2 worked as a dispatcher at Ocean Beach? 3 A. 2005. 4 Q. So there was no break in service 5 in terms of seasons that you were employed at 6 Ocean Beach, was there? 7 A. No. 8 Q. Was there any -- strike that. 9 How did you go about applying for 10 the position as dispatcher? 11 A. I think I -- I don't remember. 12 Q. Did you fill out an application? 13 A. I am not sure if I did or not for 14 the dispatcher position. 15 Q. Do you know who made the decision 16 to hire you as a dispatcher? 17 A. In 2005, no, I am not sure. 18 Q. Did you interview for the 19 position? 20 A. No. 21 Q. Did you resubmit a resume? 22 A. No. 23 Q. Did you submit any paperwork in 24 connection with your application for the 25 position as a dispatcher?</p>
<p style="text-align: right;">Page 219</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 A. No. 4 Q. Did you ever tell Chief Paradiso 5 why you were resigning as a police officer in 6 Ocean Beach? 7 MR. NOVIKOFF: Other than Cherry 8 7? 9 MR. GOODSTADT: Well, Cherry 7 10 says reluctantly. 11 MR. NOVIKOFF: Your question was 12 pretty broad. I just wanted to clarify. 13 A. Did I tell Chief Paradiso? 14 Q. Why you were resigning? 15 A. I never had a direct conversation 16 with him, no. 17 Q. Did you ever any kind of indirect 18 conversation or communication with him? 19 A. No. 20 Q. I believe that you testified that 21 you worked as a dispatcher after that; is that 22 correct? 23 MR. NOVIKOFF: Objection. 24 A. Yes. 25 Q. What was the first season that you</p>	<p style="text-align: right;">Page 221</p> <p>1 Cherry 2 A. I don't recall doing any 3 additional paperwork. 4 Q. Did you collect unemployment 5 during the period between the end of the '04 6 season and the start of the '05 season? 7 A. No. 8 Q. How come? 9 A. I didn't qualify for it. 10 Q. Did you apply for it? 11 A. Yes. 12 Q. Why do you think you didn't 13 qualify for it? 14 A. There is a certain criteria that 15 the unemployment, based on how many months you 16 work and how much you make, and I didn't fit 17 the criteria, that criteria to receive -- I 18 applied for it and then they sent me a letter 19 saying that I was not eligible that season. I 20 was not eligible at this point. 21 Q. Was it because you didn't work 22 enough hours? 23 A. Yes. A combination of hours and 24 salary. 25 Q. When you moved from the position</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 57 of 122

<p style="text-align: right;">Page 222</p> <p>1 Cherry 2 of police officer to dispatcher was there a 3 change in salary? 4 A. Yes. 5 Q. Did it go up or down? 6 A. Down. 7 Q. Would you mark as Cherry Exhibit 8 8, Confidential Wage/Salary History. March 9 23, 2004. 10 (Cherry Exhibit 8, Confidential 11 Wage/Salary History. March 23, 2004, 12 marked for identification, as of this 13 date.) 14 Q. I place in front of Mr. Cherry 15 what has now been marked as Cherry Exhibit 8, 16 it is a one-page exhibit bearing Bates stamp 17 5424. 18 Mr. Cherry, do you recognize this 19 document that is marked as Exhibit 8? 20 A. This is first time I have seen it. 21 Q. I just want you to look down, I 22 represent to you this is a document that was 23 produced to us by the Village of Ocean Beach. 24 If you look from the dates from 3/23/04 to 25 5/31/04, do you see that?</p>	<p style="text-align: right;">Page 224</p> <p>1 Cherry 2 physically as a police officer at the beach. 3 Q. Is that your hourly rate of pay, 4 the \$18.63 an hour? 5 A. Yes. To the best of my 6 recollection that is correct. 7 Q. Then as of June 1, '04 through May 8 31, '05, was that your hourly rate of pay, 9 \$19.28? 10 A. Yes, I believe we got a raise. 11 Q. I thought that Cherry 7 indicated 12 that effective immediately, meaning May 1, '05 13 you resigned as a police officer; is that 14 correct? 15 MR. NOVIKOFF: Objection. 16 A. Yes. 17 Q. Did they accept that resignation 18 as of May 1, '04? 19 A. As far as I know. 20 Q. Do you know whether you were paid 21 at the rate of a police officer during the 22 month of May 2004? 23 A. I don't believe so, no. 24 Q. So it is your belief that this is 25 incorrect?</p>
<p style="text-align: right;">Page 223</p> <p>1 Cherry 2 A. Yes. 3 Q. Does that refresh your 4 recollection as to when you first started 5 working as a police officer? 6 MR. NOVIKOFF: Objection. 7 A. That was probably -- 03/23 was 8 probably the day that I was sworn in. 9 MR. NOVIKOFF: The question is 10 does reviewing this document now 11 independent from this document refresh 12 your recollection as to when you first 13 started working as a police officer; not 14 reading this, do you have now a 15 recollection as to when you first started 16 working as a police officer. 17 A. Well, I didn't start working as a 18 police officer until the May of -- so working, 19 working as a police officer, until May of 20 2004. 21 Q. So during the period from March 22 23, '04 through May 31, '04 were you working 23 as a police officer during that period? 24 A. Probably the last two weeks in 25 May. That is when I started working</p>	<p style="text-align: right;">Page 225</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 Q. Cherry 8? 4 MR. NOVIKOFF: Objection. 5 A. I don't believe -- I was not 6 working as a police officer on the 31st, so I 7 don't believe that date is correct. 8 Q. If you look at 6/1/05 to 5/31/06, 9 do you see that? 10 A. Yes. 11 Q. It says dispatcher? 12 A. Yes. 13 Q. \$17.74, was that your rate of pay 14 during that year? 15 A. I believe so. 16 Q. The same thing for the '06, 6/1/06 17 to 5/31/07 you were a dispatcher? 18 A. Yes, I was. 19 Q. And was that your rate of pay, 20 \$18.36 an hour? 21 A. Yes. 22 Q. Do you know what your rate of pay 23 was for the '07 season? 24 A. I think it was \$19 for the '07 25 season.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 58 of 122

<p>1 Cherry</p> <p>2 Q. Were you ever paid overtime?</p> <p>3 A. No.</p> <p>4 Q. How about when you were a police officer, were you ever paid overtime?</p> <p>5 A. I don't think I ever worked enough 6 hours to get paid overtime in a given pay 7 period.</p> <p>8 Q. During the period after the '05 9 season to the start of the '06 season did you 10 collect unemployment insurance?</p> <p>11 A. I believe so. I would have to 12 check. I would have to check with my records 13 to be sure, but I believe I did.</p> <p>14 Q. And in between seasons -- strike 15 that.</p> <p>16 Prior to coming back to work in 17 the '05 season did you have to submit any 18 paperwork to apply for the position?</p> <p>19 MR. NOVIKOFF: Objection.</p> <p>20 A. Of dispatcher?</p> <p>21 Q. Well, did you start the '05 season 22 as dispatcher?</p> <p>23 A. Yes.</p> <p>24 Q. So did you have to submit any</p>	<p>Page 226</p> <p>1 Cherry</p> <p>2 Q. I just want to know what your 3 understanding is?</p> <p>4 A. Yes.</p> <p>5 Q. So it is your understanding there 6 was no process to actually be rehired for the 7 next season?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. I want to focus on the point when 10 you were employed as a police officer in Ocean 11 Beach. Did you ever have any alcoholic 12 beverages while you were on duty?</p> <p>13 A. No.</p> <p>14 Q. Did you ever have an alcoholic 15 beverage while you were in uniform?</p> <p>16 A. No.</p> <p>17 Q. Have you ever seen any police 18 officer working for Ocean Beach drinking while 19 on duty?</p> <p>20 A. I never saw anybody, no.</p> <p>21 Q. Did you ever see an Ocean Beach 22 police officer drinking in uniform?</p> <p>23 A. No, sir.</p> <p>24 Q. Did you ever see an Ocean Beach 25 police officer in a bar in uniform?</p>
<p>Page 227</p> <p>1 Cherry</p> <p>2 application for the dispatcher position?</p> <p>3 MR. NOVIKOFF: Objection, asked 4 and answered.</p> <p>5 A. I don't believe so.</p> <p>6 Q. After the '05 season ended prior 7 to the '06 season did you have to reapply for 8 the position of dispatcher?</p> <p>9 A. No.</p> <p>10 Q. Did you have to go through any 11 process to be rehired as a dispatcher?</p> <p>12 A. No.</p> <p>13 Q. Did you stay as a dispatcher 14 throughout the year for Ocean Beach?</p> <p>15 A. '06?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. So on the off season you were 19 still employed as a dispatcher for Ocean 20 Beach?</p> <p>21 A. I was employed, but I didn't work 22 during the off season.</p> <p>23 Q. So you were employed but didn't 24 work?</p> <p>25 A. As far as I know.</p>	<p>Page 229</p> <p>1 Cherry</p> <p>2 A. While working?</p> <p>3 Q. Yes.</p> <p>4 A. Yes.</p> <p>5 Q. Was it business related?</p> <p>6 A. The ones I saw yes, they were 7 business related.</p> <p>8 Q. How many times did you see 9 officers in bars?</p> <p>10 A. When we got a call to a 11 disturbance in a bar and the officers went 12 inside. So whenever we had a call for a 13 disturbance the officers responded and 14 necessitated going into the bar, they would go 15 into the bar.</p> <p>16 Q. Did you ever have any alcoholic 17 beverages in Ocean Beach while off duty?</p> <p>18 A. Yes.</p> <p>19 Q. How many times?</p> <p>20 A. I stayed after work probably two 21 or three times. In a particular season you 22 are referring to or --</p> <p>23 Q. When you were employed as a police 24 officer?</p> <p>25 A. Probably about two or three times</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 59 of 122

<p>1 Cherry</p> <p>2 I stayed after work and had a few drinks.</p> <p>3 Q. Do you know whether there is any</p> <p>4 policy with the Ocean Beach Police Department</p> <p>5 with respect to off duty police officers</p> <p>6 drinking in bars in Ocean Beach?</p> <p>7 MR. NOVIKOFF: When; now or when</p> <p>8 he was a police officer?</p> <p>9 Q. When you were a police officer.</p> <p>10 A. I didn't know of any policy that</p> <p>11 said that.</p> <p>12 Q. How about now?</p> <p>13 A. I still don't know of any policy</p> <p>14 that says that.</p> <p>15 Q. Did you ever ask anyone whether</p> <p>16 there was a policy with respect for that?</p> <p>17 MR. NOVIKOFF: Objection.</p> <p>18 A. No.</p> <p>19 Q. Did you ever have any alcoholic</p> <p>20 beverages inside the station, whether on or</p> <p>21 off duty?</p> <p>22 A. No.</p> <p>23 Q. Did you ever see any officers</p> <p>24 drinking any alcoholic beverages inside the</p> <p>25 station?</p>	<p>1 Cherry</p> <p>2 MR. NOVIKOFF: Drinking alcohol?</p> <p>3 Q. Drinking alcohol?</p> <p>4 A. No.</p> <p>5 Q. Did you ever see any alcoholic</p> <p>6 containers, whether it be a beer can or beer</p> <p>7 bottle, in the police vehicles?</p> <p>8 A. In the police vehicles, no.</p> <p>9 Q. I trust you were never required to</p> <p>10 clean up any alcoholic containers in the</p> <p>11 police vehicle?</p> <p>12 A. No.</p> <p>13 Q. Were you ever required to clean</p> <p>14 any alcoholic beverage containers at the</p> <p>15 station?</p> <p>16 A. No.</p> <p>17 Q. Did you ever hear that any of the</p> <p>18 plaintiffs in this case complained about</p> <p>19 officers drinking while on duty?</p> <p>20 A. Did I ever hear of any complaint?</p> <p>21 Q. Yes.</p> <p>22 A. I heard there were complaints</p> <p>23 about it, yes.</p> <p>24 Q. When did you hear that?</p> <p>25 A. When you are working you hear</p>
<p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Whether they were on or off duty?</p> <p>4 A. No.</p> <p>5 Q. Did you ever see any bartenders</p> <p>6 deliver any alcoholic beverages to the police</p> <p>7 station?</p> <p>8 A. No.</p> <p>9 Q. Do you know what Rocket Fuel is?</p> <p>10 A. Yes.</p> <p>11 Q. What is Rocket Fuel?</p> <p>12 A. It is a -- like a Pina Colada</p> <p>13 drink, like a super Pina Colada type drink.</p> <p>14 Q. Is it your testimony, sir, that</p> <p>15 you never saw anybody deliver Rocket Fuels to</p> <p>16 the police station?</p> <p>17 MR. NOVIKOFF: Objection.</p> <p>18 A. Yes.</p> <p>19 MR. NOVIKOFF: Yes, that is your</p> <p>20 testimony?</p> <p>21 THE WITNESS: Yes.</p> <p>22 Q. Did you ever see any police</p> <p>23 officers drinking while they were driving to</p> <p>24 the check point in the police vehicle?</p> <p>25 A. No.</p>	<p>1 Cherry</p> <p>2 things, and I couldn't recall who said what or</p> <p>3 when.</p> <p>4 Q. But you recall hearing complaints</p> <p>5 by the plaintiffs that officers were drinking?</p> <p>6 A. From the plaintiffs -- from the</p> <p>7 complainants, I never heard them complain</p> <p>8 directly or indirectly to me or anybody else.</p> <p>9 Q. So what were you referring to when</p> <p>10 you said that you heard that there were</p> <p>11 complaints?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 A. I just heard that there were</p> <p>14 complaints about drinking.</p> <p>15 Q. Who did you hear that from?</p> <p>16 A. I don't recall.</p> <p>17 Q. What did you hear about it?</p> <p>18 A. That there was somebody drinking,</p> <p>19 they were drinking on duty.</p> <p>20 Q. Do you know who was alleged to</p> <p>21 have been drinking on duty?</p> <p>22 A. No. I didn't -- I minded my own</p> <p>23 business, I didn't get involved in any of that</p> <p>24 stuff.</p> <p>25 Q. How many times did you hear that</p>

59 (Pages 230 to 233)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 60 of 122

<p style="text-align: right;">Page 234</p> <p>1 Cherry 2 there were complaints about officers drinking 3 on duty?</p> <p>4 A. I can't say.</p> <p>5 Q. Approximately how many times?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 A. Once or twice.</p> <p>8 Q. Who did you hear discussing it?</p> <p>9 A. I don't recall.</p> <p>10 Q. Did you ever discuss it with 11 anyone?</p> <p>12 A. No.</p> <p>13 Q. How did you get from the Village 14 after your tour to the checkpoint?</p> <p>15 A. We drove out in the police car.</p> <p>16 Q. When you say we, who are referring 17 to?</p> <p>18 A. The people either coming on duty 19 or going off duty.</p> <p>20 Q. Did all the officers leave 21 together that were getting off duty?</p> <p>22 A. If they were leaving they were 23 going in the same truck.</p> <p>24 Q. What do you mean if they were 25 leaving?</p>	<p style="text-align: right;">Page 236</p> <p>1 Cherry 2 duty?</p> <p>3 MR. NOVIKOFF: Objection.</p> <p>4 A. Yes.</p> <p>5 Q. How frequently?</p> <p>6 A. I couldn't say how frequently.</p> <p>7 Q. Did Arnold Harmon go out to the 8 bars in Ocean Beach after getting off duty?</p> <p>9 MR. NOVIKOFF: Objection.</p> <p>10 A. I don't recall him going out much 11 after work.</p> <p>12 Q. Did you work with Arnold Harmon on 13 a lot of tours?</p> <p>14 MR. NOVIKOFF: Objection.</p> <p>15 A. Occasionally.</p> <p>16 Q. Do you know whether he was one of 17 the officers who had the same certification 18 problem that you did?</p> <p>19 MR. NOVIKOFF: Objection.</p> <p>20 A. I believe he was.</p> <p>21 Q. How about Tyree Bacon, do you know 22 who that is?</p> <p>23 A. Yes.</p> <p>24 Q. Did Mr. Bacon go out to bars after 25 getting off tours?</p>
<p style="text-align: right;">Page 235</p> <p>1 Cherry 2 A. Some officers didn't leave, some 3 stayed. If you were going to leave the truck 4 left and you went out with the truck.</p> <p>5 Q. What do you mean by they stayed?</p> <p>6 A. If you didn't want to go out with 7 the truck, the end of tour, you stayed -- you 8 didn't go in the truck. Those who were going 9 off duty and wanted to go out to their cars to 10 leave went by truck.</p> <p>11 Q. Do you recall whether Gary 12 Bossetti used to go out in the bars at Ocean 13 Beach after getting off duty?</p> <p>14 A. Did Gary?</p> <p>15 Q. Yes.</p> <p>16 A. I believe he did.</p> <p>17 Q. Frequently?</p> <p>18 MR. NOVIKOFF: Objection.</p> <p>19 A. I don't know. I know he went 20 occasionally, but I don't know the frequency 21 of it.</p> <p>22 Q. How many times to your knowledge?</p> <p>23 A. I have no idea.</p> <p>24 Q. Did Richard Bossetti ever go out 25 to the bars in Ocean Beach after getting off</p>	<p style="text-align: right;">Page 237</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection.</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Do you know whether Mr. Bacon had 5 a certification problem like you?</p> <p>6 A. I don't believe so.</p> <p>7 Q. I believe you testified that there 8 were two to three times that you went out to 9 the bars after getting off duty?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 A. Yes.</p> <p>12 Q. On those two or three occasions 13 how did you get to the checkpoint?</p> <p>14 A. We drove out.</p> <p>15 Q. You drove out yourself?</p> <p>16 A. No. Usually somebody -- when I 17 stayed, sometimes the truck wouldn't leave 18 right away, so I -- usually we got together 19 and say anybody going out, anybody wants to go 20 out, we are going to go out, the truck is 21 going to leave at let's say 2 o'clock. So the 22 guys go out until 2 o'clock, have a drink, 2 23 o'clock they get in the truck and they drive 24 out with whoever is going out.</p> <p>25 Q. And who would drive the truck out</p>

60 (Pages 234 to 237)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 61 of 122

<p style="text-align: right;">Page 238</p> <p>1 Cherry 2 at 2 o'clock? 3 MR. NOVIKOFF: Objection. 4 A. One of the officers. 5 Q. One of the officers that was on 6 duty or one of the officers that you were out 7 with? 8 A. It would depend on whether the 9 truck was going to come back in or not. If 10 the guys were going off duty and were going to 11 leave the truck at the checkpoint by the 12 lighthouse in Fire Island, on the 4 to 8 tour, 13 the guys who were off duty would take the 14 truck out. If the truck was going to come 15 back into the Village, then somebody who was 16 working would take the truck out. 17 Q. Was it part of the officers who 18 were on duty's responsibility to drive the 19 officers who had been off duty and out 20 drinking to the checkpoint? 21 MR. NOVIKOFF: Objection. 22 A. It would be if the truck wasn't -- 23 if the truck was supposed to come back into 24 the Village for it to take the people off for 25 a later tour, like a 5 o'clock tour, end of</p>	<p style="text-align: right;">Page 240</p> <p>1 Cherry 2 Q. How long did it take to get from 3 the Village to the lighthouse? 4 A. I would say fifteen minutes. 5 Q. So a round trip is about a half 6 hour? 7 A. Roughly. 8 Q. Did you ever hear -- strike that. 9 Did any of the plaintiffs in this 10 case ever drive you to the checkpoint on a 11 night where you stayed after your tour to 12 drink in the bars? 13 A. I don't recall. 14 Q. Did you ever hear that the 15 plaintiffs complained about having to drive 16 officers to the checkpoint after they had 17 gotten off their tour and had been drinking in 18 the bars? 19 MR. NOVIKOFF: Objection. 20 A. I never heard any complaints to 21 that effect. 22 Q. Prior to working in Ocean Beach 23 did you know any of the plaintiffs in this 24 case? 25 A. No.</p>
<p style="text-align: right;">Page 239</p> <p>1 Cherry 2 the 5 o'clock tour. 3 Q. What was the tour after your 4 to 4 12 tour? 5 A. It was 4 to 12 on the Saturdays, 6 you had like a split tours. You had 4 to 12, 7 some people stayed until 1. Then you had the 8 like 9 at night to 5 in the morning tour. So 9 there would be people -- there could be people 10 going out at 12 after the 1 o'clock or 1:30 or 11 so -- after the 1 o'clock, the end of the 1 12 o'clock tour you go out around 1:30. Then 13 there was another tour, 9 to 5 tour go out at 14 5 o'clock. 15 Q. How many officers were on the 9 to 16 5 tour? 17 A. It would vary, I couldn't say for 18 sure. 19 Q. What would it vary between, what 20 was the lowest number? 21 MR. NOVIKOFF: Objection. 22 A. I would say two would be the 23 lowest. 24 Q. What was the highest number? 25 A. Maybe four or five.</p>	<p style="text-align: right;">Page 241</p> <p>1 Cherry 2 Q. Did you work while you were 3 employed as a police officer in Ocean Beach, 4 did you work with the plaintiffs in this case? 5 A. Yes. 6 Q. All five of them? 7 A. Yes. At one time or another 8 during that course of the season I worked with 9 all five. 10 Q. Did any of the plaintiffs in this 11 case work that 4 to 12 tour with you, or is it 12 just part of that split tour that you 13 testified to? 14 A. It would be any of the tours. I 15 worked 4 to 12, so I am sure that I worked 16 nights when they were working, you know, each 17 of the officers were working. 18 Q. Were you ever partnered with any 19 of the plaintiffs in this case? 20 A. I was partnered I think with Kevin 21 Lamm one night. I don't know if Frank or 22 Tommy ever worked -- if we ever worked 23 together as partners. Mostly worked alone 24 unless it was a Saturday night, and they team 25 up on Saturday night.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 62 of 122

<p style="text-align: right;">Page 242</p> <p>1 Cherry 2 Q. Did you have a specific officer 3 who you would partner with more frequently 4 than others?</p> <p>5 MR. NOVIKOFF: Objection. 6 A. No. 7 Q. Do you believe that the plaintiffs 8 in this case were good police officers?</p> <p>9 MR. NOVIKOFF: Objection. 10 A. It was not my duty -- I wouldn't 11 evaluate them as a fellow police officer to 12 say yes or no.</p> <p>13 Q. Well sitting here today how do you 14 evaluate their performance?</p> <p>15 MR. NOVIKOFF: Objection. 16 A. As I said I wouldn't evaluate 17 them. As a police officer we did our jobs. I 18 did mine, they did their's. I wouldn't be a 19 person who would rate them whether good, bad 20 or indifferent.</p> <p>21 Q. After 31 years as a Nassau County 22 Police Officer and one year as a police 23 officer in the Village of Ocean Beach you 24 couldn't rate their performance; is that your 25 testimony?</p>	<p style="text-align: right;">Page 244</p> <p>1 Cherry 2 Village of Ocean Beach as a police officer 3 whether you believe -- we can go individually. 4 Frank Fiorillo, was he a good 5 police officer?</p> <p>6 MR. NOVIKOFF: Objection. Asked 7 and answered. Foundation. To the extent 8 that you can answer, answer.</p> <p>9 A. Was he a good police officer; in 10 what respect, I don't understand what respect 11 you are asking.</p> <p>12 Q. Performing the duties of a police 13 officer, you testified before to what they 14 were. So in performing those duties do you 15 believe that Frank Fiorillo was a good 16 officer?</p> <p>17 MR. NOVIKOFF: Objection. Asked 18 and answered. Foundation. Go ahead, 19 sir.</p> <p>20 A. Frank answered -- from what I can 21 see -- you are talking when I was a police 22 officer or in general or over the course of 23 the years that I worked there?</p> <p>24 Q. Sitting here today what you have 25 seen of Frank Fiorillo as a police officer,</p>
<p style="text-align: right;">Page 243</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. You can 3 answer.</p> <p>4 A. I just don't do that. I wouldn't 5 rate them on their job performance. Not my 6 responsibility and I wouldn't rate them.</p> <p>7 Q. I am asking you, I know you 8 wouldn't rate them, but I am asking you today 9 as you sit here to rate them, do you believe 10 that they were good police officers?</p> <p>11 MR. NOVIKOFF: Objection. Asked 12 and answered. Foundation. Go ahead, I 13 am not telling you not to answer.</p> <p>14 A. I don't know how to answer that 15 question.</p> <p>16 Q. Is there something that could help 17 you answer that question, should I rephrase 18 it. I am not sure what you can't answer about 19 it?</p> <p>20 A. You are asking for my opinion, 21 personal opinion?</p> <p>22 Q. I am asking for your opinion as 23 someone who has 31 years of experience as a 24 decorated Nassau County Police Officer; and 25 Detective, and someone who is employed in the</p>	<p style="text-align: right;">Page 245</p> <p>1 Cherry 2 whether it was while you were a police 3 officer, while you were a dispatcher, you were 4 up in the police station as a dispatcher; 5 correct?</p> <p>6 A. Yes, that is correct.</p> <p>7 Q. So based on that experience do you 8 think that Frank Fiorillo was a good police 9 officer?</p> <p>10 MR. NOVIKOFF: Just so I am clear 11 on the question, you are asking based on 12 his witnessing of Mr. Fiorilli's conduct 13 as a police officer, does he have an 14 opinion as to whether he is good or not?</p> <p>15 Q. Based on your witnessing it, based 16 on anything that you heard, based on your 17 opinion sitting here today.</p> <p>18 MR. NOVIKOFF: The way that 19 question is structured I object. You can 20 answer.</p> <p>21 A. Frank answered his calls, he did 22 his job as far as responding to assignments. 23 His demeanor with the public was a little 24 rough I would say. That's about it.</p> <p>25 Q. Other than from his demeanor with</p>

62 (Pages 242 to 245)

<p style="text-align: center;">Page 246</p> <p>1 Cherry 2 the public being rough, was there anything 3 else that you believed that was not good about 4 Mr. Fiorilli's performance as a police 5 officer?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 A. I would say no.</p> <p>8 Q. What did you mean by the demeanor 9 with the public was rough?</p> <p>10 A. He seems to be a little abrasive 11 with the public from what I can see. He comes 12 on strong.</p> <p>13 Q. Are you aware of any complaints 14 made about Mr. Fiorilli by any member of the 15 public?</p> <p>16 A. Am I personally aware of any?</p> <p>17 Q. Whether personally or not 18 personally, I am not sure -- I am not asking 19 whether someone actually complained to you, I 20 am asking whether you are aware of any 21 complaints about Mr. Fiorilli when he was a 22 police officer at Ocean Beach?</p> <p>23 MR. NOVIKOFF: Objection. To the 24 extent that you have knowledge you can 25 answer.</p>	<p style="text-align: center;">Page 248</p> <p>1 Cherry 2 who made the complaints or when or why. 3 Q. How did you learn that there were 4 complaints that were made?</p> <p>5 A. You hear things, you see things 6 the way they happened.</p> <p>7 Q. Who did you hear it from?</p> <p>8 A. I don't recall.</p> <p>9 Q. Where did you see it?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 MR. CONNOLLY: Can we take a break 12 right now?</p> <p>13 MR. GOODSTADT: Let me ask the 14 question.</p> <p>15 MR. NOVIKOFF: Note my objection, 16 you can answer.</p> <p>17 A. What was the question?</p> <p>18 Q. Who did you see it from; let me 19 rephrase it. What did you see?</p> <p>20 A. Sometimes when he confronted 21 people he would do it a lot more forcibly than 22 I would. Just going by, you asked me for my 23 opinion and I am giving it to you.</p> <p>24 MR. GOODSTADT: Let's take a 25 break.</p>
<p style="text-align: center;">Page 247</p> <p>1 Cherry</p> <p>2 A. I am just not quite sure how to 3 answer that. I think there were some 4 complaints that he was abrasive in the way he 5 came on to people when they were being stopped 6 by him for violations, Village ordinances, 7 like riding bikes and things like that.</p> <p>8 Q. Do you know of any specific 9 complaints that were raised about him?</p> <p>10 A. Not personally, no.</p> <p>11 Q. Do you know anybody who raised a 12 complaint about Mr. Fiorilli?</p> <p>13 A. No, not anybody by name who raised 14 a complaint.</p> <p>15 Q. When were these complaints raised?</p> <p>16 A. You know, I don't know specific 17 complaints that were made, just the feel I got 18 for Frank was that he was -- you asked me my 19 opinion, I gave you my opinion. He was 20 somewhat abrasive or rough the way he handled 21 some of the people that he dealt with.</p> <p>22 Q. You heard that -- you testified 23 that there were some complaints?</p> <p>24 A. I heard there were complaints, 25 just what I said. But I can't be specific on</p>	<p style="text-align: center;">Page 249</p> <p>1 Cherry</p> <p>2 THE VIDEOGRAPHER: The time is 3 2:30. We are going off the record.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: The time is 6 2:48. We are back on the record.</p> <p>7 Q. Before we broke Mr. Cherry you 8 testified that Mr. Fiorilli had done things 9 with a little more force than you would; is 10 that correct?</p> <p>11 MR. NOVIKOFF: Objection.</p> <p>12 A. As far as coming on, being more 13 forceful with his demeanor with civilians 14 sometimes.</p> <p>15 Q. Were there any other officers in 16 Ocean Beach that had the same viewpoint about?</p> <p>17 A. I think Kevin Lamm would be the 18 same.</p> <p>19 Q. Anyone else?</p> <p>20 A. I can't think of anybody else.</p> <p>21 Q. Did you believe that George Hesse 22 came on more forcibly than you would to any 23 member of the public?</p> <p>24 MR. NOVIKOFF: Objection.</p> <p>25 Q. In any dealings with the public?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 64 of 122

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 65 of 122

<p>1 Cherry 2 Foundation. 3 A. In my opinion Joe needed some 4 guidance when he was working. As a matter of 5 fact we used to -- he used to be assigned to 6 work with Frank to not help him out, but sort 7 of -- you know, partner up with him so if he 8 had any problem Frank could help him out with 9 it.</p> <p>10 Q. So did you understand that Frank 11 was assigned to help mentor Joe?</p> <p>12 A. To be with him, to assist Joe if 13 he had any problems.</p> <p>14 Q. What leads to believe that Joe 15 Nofi needed guidance?</p> <p>16 A. Just the way he performed his 17 duties, writing summonses and some of the 18 ways -- you know I saw as a dispatcher I get 19 all the summons and they were not written very 20 clearly. You know, what happened. Frank 21 would assist Joe with those.</p> <p>22 Q. Anything else other than the way 23 he wrote summonses that led you to believe 24 that he needed guidance?</p> <p>25 A. No. I didn't work very many tours</p>	<p>Page 254</p> <p>1 Cherry 2 lead you to believe that Mr. Nofi was not a 3 good police officer? 4 MR. NOVIKOFF: Objection. 5 A. No. 6 Q. I want to focus now on the 7 Halloween incident. 8 A. Okay. 9 Q. That you had testified to before. 10 That was the, just so we are clear, same page, 11 that was the alleged assault at Houser's Bar 12 on Halloween night of 2004? 13 A. Okay. 14 Q. Again just so we are clear, I 15 believe, correct me if I am wrong so we are 16 working on the same page, that it was the 17 night of October 30th into the morning of 18 October 31st; is that right? 19 A. Yes. 20 Q. How did you first learn that there 21 was an incident in Houser's? 22 A. Sergeant Hesse called me at home 23 to tell me that Gary Bossetti had been fired 24 as a result of an incident that occurred at 25 Houser's Bar.</p>
<p>Page 255</p> <p>1 Cherry 2 with Joe, but enough to see that he needed 3 some guidance.</p> <p>4 Q. Did you ever tell Joe that his 5 summonses were not clear?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 A. Occasionally I couldn't read them. 8 I said Joe, I can't read this. I would have 9 to put the contents of the summons into the 10 computer and I couldn't read them, or they 11 were broken sentences, what exactly do you 12 mean by this.</p> <p>13 Q. So it was not his penmanship you 14 are talking about, it was the actual words 15 that you didn't understand?</p> <p>16 A. Yes. Both, it was both.</p> <p>17 Q. How many times did you tell him 18 that his summonses were not clear?</p> <p>19 A. A couple of times.</p> <p>20 Q. Were there any other officers at 21 Ocean Beach whose summonses were not clear?</p> <p>22 A. None that I can think of.</p> <p>23 Q. Other than for the fact that his 24 summonses at times were not clear was there 25 anything else that you are aware of that would</p>	<p>Page 257</p> <p>1 Cherry 2 Q. Did he tell you what the incident 3 was or did he say just say that there was an 4 incident? 5 A. He said that it was alleged that 6 Gary had attacked a number of people with a 7 pool cue. 8 Q. Did he tell you who that was 9 alleged by? 10 A. He said the officers who responded 11 to the scene in their report. 12 Q. What day was this? 13 A. October 31st. 14 Q. He called you -- 15 A. I am sorry, I believe he called me 16 on the 31st. Let me correct that, it was 17 either the 31st or the 1st, I am not sure. 18 Q. So he told you that the officers 19 who were at the scene had alleged that Gary 20 hit a number of people with a pool cue? 21 A. Based on what they were told by 22 the people they interviewed. 23 Q. So it was not the officers who 24 were making the allegation, it was the people 25 that they interviewed that were making the</p>

65 (Pages 254 to 257)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 66 of 122

<p style="text-align: right;">Page 258</p> <p>1 Cherry 2 allegation? 3 A. Yes. 4 Q. At that point in time did Hesse 5 tell you who the officers that were on duty 6 that night? 7 A. I believe he did, yes. 8 Q. Who was on duty that night? 9 A. I believe it was Frank Fiorillo, 10 Thomas Snyder and Kevin Lamm. 11 Q. What else did Officer Hesse tell 12 you during that night? 13 A. He said the chief had fired Gary. 14 Q. Did he tell you why the chief 15 fired him? 16 A. Because of the incident. 17 Q. Did he tell you what his thoughts 18 were on the chief's decision to fire Gary? 19 A. Not at that time, no. You are 20 talking about the original call? 21 Q. Still now about the original call 22 on either the 31st or 1st? 23 A. Right. 24 Q. So he called you at your home? 25 A. Yes.</p>	<p style="text-align: right;">Page 260</p> <p>1 Cherry 2 told you that Gary had been fired by the 3 chief? 4 A. I was -- I said why, what 5 happened. I said what happened. Why did he 6 attack these people, that was my first 7 question. And George said I don't know. He 8 said these are the initial reports that we 9 got. He said the chief had assigned him to 10 look into the matter. 11 Q. He actually told you that the 12 chief assigned him to look into the matter? 13 A. He said the chief said to look 14 into it and see what you can find what 15 happened. 16 Q. Do you recall anything else that 17 was stated during that first call? 18 A. Yes. George asked me if I could 19 assist him. I said to do what. He said what 20 do you think we should do. I said I think you 21 should go find some witnesses who were there 22 and find out what happened, take statements 23 from them. 24 Q. Did he respond to that? 25 A. Pardon me?</p>
<p style="text-align: right;">Page 259</p> <p>1 Cherry 2 Q. Do you know what time of day it 3 was? 4 A. I don't know. I believe it was in 5 the morning, but I am not sure. 6 Q. Was Officer Hesse at the station 7 when called you? 8 A. I don't know. 9 Q. You didn't ask him where he was? 10 A. No. 11 Q. Do you have caller ID at home? 12 A. I do, but I don't recall what the 13 number -- what number it was that he was 14 calling from. 15 Q. Did Hesse generally work morning 16 tours? 17 MR. NOVIKOFF: Objection. 18 A. No, not generally. 19 Q. In 2004 he generally worked the 20 night tour, or the 4 to 12 tour? 21 A. Yes. 22 Q. So this call happened outside of 23 the 4 to 12 period? 24 A. I believe so, yes. 25 Q. What was your response when he</p>	<p style="text-align: right;">Page 261</p> <p>1 Cherry 2 Q. Did he respond to that suggestion? 3 A. He said can you help me with this. 4 I said to do what. He said can you help me 5 take the statements. I said yes, okay, if you 6 want me to. 7 Q. Did tell you that he would pay you 8 for that time? 9 MR. NOVIKOFF: That George would 10 pay him or the Village -- 11 Q. That you would be paid for that 12 time? 13 A. That didn't come up at that time. 14 Q. This is after the season, right? 15 A. Yes, that would be after the 16 season. 17 Q. Had you worked any tours between 18 the end of '04 and this call from George 19 Hesse? 20 A. No. 21 Q. What else was discussed between 22 you and Mr. Hesse during that call? 23 A. That was about it. On the call 24 you are talking about. 25 Q. Well, did you agree that you would</p>

66 (Pages 258 to 261)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 67 of 122

<p style="text-align: right;">Page 262</p> <p>1 Cherry 2 help him and assist him? 3 A. Yes, sort of reluctantly. I was 4 finished for the season, I really didn't want 5 to go back to work, but since he asked me I 6 said I would help him. 7 Q. Did you speak with the chief at 8 all about the Halloween incident? 9 A. No. 10 MR. NOVIKOFF: When you say 11 chief -- 12 MR. GOODSTADT: Paradiso. 13 MR. NOVIKOFF: Okay. 14 A. My cold is acting up. 15 Q. So sitting here today have you 16 ever spoken with Chief Paradiso about the 17 Halloween incident? 18 A. I don't believe I ever have. 19 Q. Did you ever have any 20 correspondence with the chief, when I say 21 chief I mean Chief Paradiso about the 22 Halloween incident? 23 A. Any correspondence -- 24 Q. Written or verbal, I just want to 25 make sure I am as broad as possible?</p>	<p style="text-align: right;">Page 264</p> <p>1 Cherry 2 A. I was home, probably home to the 3 best of my recollection. 4 Q. You were not at Ocean Beach at 5 all? 6 A. No. 7 Q. You didn't work any tours that day 8 or that night? 9 A. No. 10 Q. And at that point in time just so 11 I am clear you actually -- you had the title 12 of seasonal police officer, but you had not 13 been certified by Suffolk County; is that 14 correct? 15 MR. NOVIKOFF: Objection. 16 A. Yes, that is correct. 17 Q. So again I think we went over this 18 before, but I just want to go over this time 19 line again. So assuming that those 20 requirements that we went over before were in 21 effect as of that time, you were a civilian; 22 is that correct? 23 MR. NOVIKOFF: Objection. 24 Q. On that night? 25 A. I didn't know that I was a</p>
<p style="text-align: right;">Page 263</p> <p>1 Cherry 2 A. Yeah, I don't think I had any 3 interaction with the chief concerning the 4 Halloween incident. 5 Q. And you were not at Houser's the 6 night of the Halloween incident; correct? 7 A. No, I was not. 8 Q. Have you ever been at the Ocean 9 Beach Halloween party? 10 A. No. 11 Q. Are you aware of somebody 12 committing suicide at a Halloween party at 13 Ocean Beach, or after the Halloween party? 14 MR. NOVIKOFF: Just again, I don't 15 mean to be interrupting. Is he aware 16 that someone committed suicide, or is he 17 aware that someone told him that someone 18 committed suicide? 19 MR. GOODSTADT: I don't care how 20 you are aware, whether you -- 21 MR. NOVIKOFF: Okay. 22 A. I was not aware that anybody 23 committed suicide after a Halloween party. 24 Q. Where were you the night of the 25 30th into the morning of the 31st?</p>	<p style="text-align: right;">Page 265</p> <p>1 Cherry 2 civilian at that point. At some time shortly 3 after that I was aware that we had to take the 4 Suffolk County Civil Service required tests. 5 But at that point I was under the assumption 6 that I was a police officer. 7 Q. I know what your assumption was, 8 but now I am asking that you have the 9 knowledge using my assumptions -- 10 A. On your assumptions that is 11 correct. 12 MR. NOVIKOFF: Objection. 13 Q. Where is Houser's actually located 14 in respect to the Police Department? 15 A. It is on Bay Walk east of the 16 Police Department maybe about 150 yards, 200 17 yards away. That is a rough estimate on my 18 part. 19 Q. Had you ever been at Houser's 20 prior to the Halloween incident? 21 A. No. 22 Q. So you were never there on police 23 business or social reasons? 24 A. No. 25 Q. That means that you have never</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 68 of 122

<p style="text-align: right;">Page 266</p> <p>1 Cherry 2 issued any summonses or tickets to Houser's? 3 A. No. 4 Q. Never issued any summonses or 5 tickets to the bartender at Houser's? 6 A. No. Excuse me, I don't know who 7 the bartender was. 8 Q. I am talking about in connection 9 with their duties as a bartender? 10 A. No. 11 Q. You never issued any summons or 12 tickets or any patrons at Houser's in 13 connection with their patronizing Houser's? 14 A. No. 15 Q. How long did that initial phone 16 call last with Mr. Hesse that you testified to 17 on October 31st and November 1st? 18 A. I would say maybe roughly three or 19 four or five minutes. 20 Q. Did you take any notes of that 21 call? 22 A. No. 23 Q. Do you know whether he took any 24 notes of that call? 25 A. Not that I am aware of.</p>	<p style="text-align: right;">Page 268</p> <p>1 Cherry 2 Q. Does that refresh your 3 recollection as to when the actual call 4 happened? 5 MR. NOVIKOFF: Objection. You can 6 answer. 7 A. I went in on the 2nd, I am not 8 sure if the call was the day of the 31st or 9 the day of the 1st. I am not sure what day it 10 was. 11 Q. I believe you just testified that 12 you told Hesse that you could come in 13 tomorrow? 14 A. I must have mis-spoke. 15 Q. So you don't recall the time -- 16 A. I don't remember which day the 17 call came in, either the 31st or the 1st, one 18 of those two days, I am not sure which. It 19 was four years ago, I don't remember. 20 Q. Now I am actually a little bit 21 confused. You are not sure on the day you 22 went in? 23 A. No. The day I went in was the 24 2nd. 25 Q. Are you not sure that you told him</p>
<p style="text-align: right;">Page 267</p> <p>1 Cherry 2 Q. When was the -- who was the next 3 person that you had any correspondence with 4 with respect to the Halloween incident after 5 that phone call? 6 A. I believe on November 2nd I went 7 into the police station, I went to Ocean 8 Beach. 9 Q. So between speaking with George 10 Hesse on that first call and going to the 11 police station on November 2nd did you speak 12 with anybody or have any correspondence with 13 anyone with respect to the Halloween incident? 14 A. I don't believe so. 15 Q. So there were no subsequent 16 discussions between you and Mr. Hesse prior to 17 going to the Ocean Beach Police Department on 18 the 2nd? 19 A. No. 20 MR. NOVIKOFF: Objection. 21 Q. Did you tell him that you were 22 going to come in on the 2nd? 23 A. Yes. He said can you come in. I 24 said I can't come in today. I said I will 25 come in tomorrow, the 2nd.</p>	<p style="text-align: right;">Page 269</p> <p>1 Cherry 2 that you are coming in tomorrow? 3 A. Correct. I said I would come in 4 and I came in whatever day the 2nd was, that 5 was the day I went in. 6 Q. So you told him you were going to 7 come in on the 2nd; did you guys have a plan 8 to meet there on the 2nd? 9 MR. NOVIKOFF: Objection. 10 A. I went in. I don't recall exactly 11 what I said to him as far as when I was coming 12 in. However I did go in -- but I was there on 13 November 2nd. 14 Q. Did you bring anything with you? 15 A. No. 16 Q. When you went on the 2nd? 17 A. No. 18 Q. Were you in uniform? 19 A. No. 20 Q. Did you bring your shield? 21 A. Yes. 22 Q. Did you bring a weapon? 23 A. My off duty weapon. 24 Q. Was that a beach issued weapon? 25 A. No.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 69 of 122

<p style="text-align: right;">Page 270</p> <p>1 Cherry</p> <p>2 Q. Your own personal weapon?</p> <p>3 A. Yes.</p> <p>4 Q. When you went into the Ocean Beach</p> <p>5 Police Department on November 2nd who was</p> <p>6 there?</p> <p>7 A. Chief Paradiso was there and</p> <p>8 Sergeant Hesse was there.</p> <p>9 Q. Did you have any communication</p> <p>10 with Chief Paradiso that day?</p> <p>11 A. No. Other than to say hello.</p> <p>12 Q. Other than Paradiso and Hesse was</p> <p>13 anybody else there?</p> <p>14 A. Not to my recollection.</p> <p>15 Q. Was Paradiso, he was on duty at</p> <p>16 that time?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Was Hesse on duty at that time?</p> <p>19 A. Yes, he was.</p> <p>20 Q. What time on the 2nd did you go</p> <p>21 in?</p> <p>22 A. I believe it was the morning, I</p> <p>23 took a ferry over, but I couldn't tell you</p> <p>24 what time exactly.</p> <p>25 Q. When you got there did you have a</p>	<p style="text-align: right;">Page 272</p> <p>1 Cherry</p> <p>2 the private conversation you had with the</p> <p>3 chief?</p> <p>4 A. We sat down. George showed me the</p> <p>5 reports. I read the reports. And he said</p> <p>6 what should we do. And as I said in the</p> <p>7 telephone conversation, let's see if we can</p> <p>8 find some witnesses who were there that night</p> <p>9 who can give us some idea what happened. That</p> <p>10 way you have a foundation to go interview</p> <p>11 other people.</p> <p>12 Q. What reports did he show you?</p> <p>13 A. He showed me the case report. The</p> <p>14 report prepared by I believe it was the</p> <p>15 officers who were at the scene, and the</p> <p>16 statements taken by them, and I believe there</p> <p>17 were pictures that they had taken.</p> <p>18 Q. So you reviewed the pictures, the</p> <p>19 field report?</p> <p>20 A. Right.</p> <p>21 Q. And the witness statements?</p> <p>22 A. That is correct.</p> <p>23 Q. Anything else that you reviewed?</p> <p>24 A. Whatever was there with the -- I</p> <p>25 think that was it as far as what was there.</p>
<p style="text-align: right;">Page 271</p> <p>1 Cherry</p> <p>2 conversation with Hesse?</p> <p>3 A. Yes.</p> <p>4 Q. How long did the initial</p> <p>5 conversation last?</p> <p>6 A. Well, I was there for a couple of</p> <p>7 hours. So I had a conversation with Sergeant</p> <p>8 Hesse, and he had a private conversation with</p> <p>9 the chief, and then I believe the chief left,</p> <p>10 he left and I -- George and I sat down and</p> <p>11 talked about it.</p> <p>12 Q. What did you and George discuss in</p> <p>13 the initial conversation prior to the private</p> <p>14 conversation with the chief?</p> <p>15 A. He thanked me, he called. He said</p> <p>16 thanks for coming over, I can use some help on</p> <p>17 this. He had a conversation with the chief.</p> <p>18 The chief left, and George and I discussed the</p> <p>19 case.</p> <p>20 Q. Did you do anything to prepare for</p> <p>21 your assistance that you would be providing</p> <p>22 prior to going there on November 2nd?</p> <p>23 A. No.</p> <p>24 Q. Where did the conversation happen</p> <p>25 with George Hesse that you had with him after</p>	<p style="text-align: right;">Page 273</p> <p>1 Cherry</p> <p>2 You know, what the reports that the officers</p> <p>3 who were at the scene made. Anything they had</p> <p>4 in other words I looked at.</p> <p>5 Q. And prior to looking at the</p> <p>6 reports what else did you and Mr. Hesse</p> <p>7 discuss?</p> <p>8 A. As I said I suggested that we try</p> <p>9 to find some witnesses who were there, and he</p> <p>10 said he would try to find out who was there</p> <p>11 that we could talk and interview them. We</p> <p>12 also had a memo sent by a Budd Jaeger</p> <p>13 indicating that he had heard that Gary had</p> <p>14 gotten fired, this was in the statement, and</p> <p>15 that explained how Gary had came to the</p> <p>16 defense of his wife who was attacked by a</p> <p>17 person coming out of the lady's room, or</p> <p>18 coming in the bathroom area of the Houser's</p> <p>19 Bar.</p> <p>20 Q. Do you know whether Budd Jaeger</p> <p>21 had a personal relationship with Hesse?</p> <p>22 A. I don't know what the relationship</p> <p>23 was. He was also the -- he ran the theater</p> <p>24 over there at Ocean Beach.</p> <p>25 MR. NOVIKOFF: The what?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 70 of 122

<p>1 Cherry</p> <p>2 THE WITNESS: The theater, the</p> <p>3 movie theater.</p> <p>4 A. I don't know if they had a</p> <p>5 relationship at that time. I still don't know</p> <p>6 what the relationship was at that time with</p> <p>7 Budd Jaegger.</p> <p>8 Q. You say you still don't know, is</p> <p>9 that what you just said?</p> <p>10 A. What the relationship was at that</p> <p>11 time I don't know. If I may, you have to</p> <p>12 remember George was over there, the supervisor</p> <p>13 of the policemen over there for fourteen years</p> <p>14 and he knew a lot of people over there. So I</p> <p>15 guess he knew who Budd was. I don't know if</p> <p>16 there was any other relationship other than</p> <p>17 that.</p> <p>18 Q. Do you know what Officer Hesse's</p> <p>19 relationship was with Jean Jaegger?</p> <p>20 A. No.</p> <p>21 Q. During your initial discussion</p> <p>22 with George Hesse when you arrived there on</p> <p>23 the 2nd, when I say initial discussion I am</p> <p>24 talking about the discussion you had after the</p> <p>25 private discussion with the chief, did you</p>	<p>Page 274</p> <p>1 Cherry</p> <p>2 Q. Well, you knew that Budd Jaegger</p> <p>3 was a witness; correct?</p> <p>4 A. Yes.</p> <p>5 Q. So you knew at least one witness;</p> <p>6 right?</p> <p>7 A. Yes, at that point.</p> <p>8 MR. NOVIKOFF: Objection.</p> <p>9 A. Excuse me, he was not a witness to</p> <p>10 what happened, he was relaying what his wife</p> <p>11 had told him happened in his memo.</p> <p>12 MR. NOVIKOFF: That was the basis</p> <p>13 for my objection to the question.</p> <p>14 Q. Did you contact Budd Jaegger as</p> <p>15 part of your investigation?</p> <p>16 A. No, not Budd, I didn't contact</p> <p>17 Budd.</p> <p>18 Q. Do you know whether Mr. Hesse did?</p> <p>19 A. I don't know for sure. I don't</p> <p>20 know if he had discussions with him or not</p> <p>21 about the memo.</p> <p>22 Q. The statement that you had from</p> <p>23 Budd Jaegger, do you know whether that was</p> <p>24 solicited or was it sent in on his own?</p> <p>25 A. I believe it was sent in on his</p>
<p>Page 275</p> <p>1 Cherry</p> <p>2 guys discuss the goals of the investigation?</p> <p>3 MR. NOVIKOFF: Objection. You can</p> <p>4 answer.</p> <p>5 A. The goals of the investigation;</p> <p>6 finding out what happened.</p> <p>7 Q. Did you discuss that?</p> <p>8 A. Yes.</p> <p>9 Q. Did you discuss as one of the</p> <p>10 goals being trying to get Gary Bossetti's job</p> <p>11 back?</p> <p>12 A. No. The object of the</p> <p>13 investigation was to find out what happened.</p> <p>14 Q. Officer Hesse didn't tell you that</p> <p>15 one of his goals was to get Gary Bossetti's</p> <p>16 job back?</p> <p>17 A. No.</p> <p>18 Q. When you decided amongst</p> <p>19 yourselves that you would try to find</p> <p>20 witnesses to take statements from, did you</p> <p>21 prepare a list of witnesses?</p> <p>22 MR. NOVIKOFF: Objection.</p> <p>23 A. No because I didn't know who was</p> <p>24 witnesses at that time. As it turned out</p> <p>25 witnesses came forward.</p>	<p>Page 275</p> <p>1 Cherry</p> <p>2 own.</p> <p>3 Q. At any point in the investigation</p> <p>4 did you speak with any of the three officers</p> <p>5 who were on duty that night?</p> <p>6 A. No.</p> <p>7 Q. At any point in the investigation</p> <p>8 did you speak with Brian Van Koot?</p> <p>9 A. No.</p> <p>10 Q. Did you attempt to speak to Brian</p> <p>11 Van Koot at any point during the</p> <p>12 investigation?</p> <p>13 MR. NOVIKOFF: Objection.</p> <p>14 A. No.</p> <p>15 Q. Did you speak with Christopher</p> <p>16 Schalik at any point during the investigation?</p> <p>17 A. No.</p> <p>18 Q. Did you attempt to speak with</p> <p>19 Mr. Schalik at any point in time during the</p> <p>20 investigation?</p> <p>21 A. No.</p> <p>22 Q. Did you speak with John Tesoro at</p> <p>23 any point during your investigation?</p> <p>24 A. No.</p> <p>25 Q. Did you attempt to speak with</p>

70 (Pages 274 to 277)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 71 of 122

<p style="text-align: right;">Page 278</p> <p>1 Cherry</p> <p>2 Mr. Tesoro at any point during your 3 investigation?</p> <p>4 A. No. If I may point out, you said 5 referring to my investigation, it was I was 6 assisting Sergeant Hesse in the investigation.</p> <p>7 Q. That is fair. When I say your 8 investigation I am referring to the 9 investigation that was performed by you and 10 Mr. Hesse?</p> <p>11 A. Okay.</p> <p>12 Q. Do you know whether Mr. Hesse 13 spoke to Brian Van Koot as part of the 14 investigation?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know whether he attempted 17 to speak to Mr. Van Koot as part of the 18 investigation?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know whether Mr. Hesse 21 spoke with Chris Schalik as part of his 22 investigation?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know whether he attempt to 25 do speak with Mr. Schalik as part of the</p>	<p style="text-align: right;">Page 280</p> <p>1 Cherry</p> <p>2 these people.</p> <p>3 We were trying to get some 4 background information as to what happened 5 prior to the assault to see if there was any 6 reason why Gary would assault somebody.</p> <p>7 Q. I think you testified before that 8 these statements were incomplete; is that 9 correct?</p> <p>10 A. That is correct.</p> <p>11 Q. So why wouldn't you speak to the 12 three people who you know were witnesses about 13 what happened before the assault to complete 14 their statements?</p> <p>15 A. It was clear from the statements 16 that they took that they were accusing Gary 17 Bossetti of assaulting them. We were trying 18 to find out by interviewing independent 19 witnesses what transpired to cause that 20 assault, if in fact an assault had taken 21 place. We were trying to get some background 22 information by interviewing witnesses to see 23 if there was any reason why Gary would assault 24 somebody.</p> <p>25 Q. Don't you think it would be</p>
<p style="text-align: right;">Page 279</p> <p>1 Cherry</p> <p>2 investigation?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know whether Mr. Hesse 5 spoke to John Tesoro as part of the 6 investigation?</p> <p>7 A. I don't know.</p> <p>8 Q. Do you know whether he attempted 9 to speak to Mr. Tesoro as part of the 10 investigation?</p> <p>11 A. I don't know.</p> <p>12 Q. At that point in time you knew 13 that the three of them were witnesses; is that 14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Why wouldn't you speak with them?</p> <p>17 A. They were -- they had -- we had 18 their statements from the -- the officers took 19 statements from them. My part of the 20 investigation was to find out what happened as 21 far as -- they never spoke to the officer they 22 went to assist. We were trying to find out 23 what happened -- why did Gary if he assaulted 24 these people, what was -- if Gary had 25 assaulted these people, why he had assaulted</p>	<p style="text-align: right;">Page 281</p> <p>1 Cherry</p> <p>2 important also for you to speak to the alleged 3 victims of the assault?</p> <p>4 MR. NOVIKOFF: Objection. You can 5 answer.</p> <p>6 A. Not at that point.</p> <p>7 Q. At any point do you think it would 8 have been important for you to speak or for 9 Mr. Hesse to speak to the victims of the 10 assault as part of the investigation?</p> <p>11 MR. NOVIKOFF: Objection. Only as 12 to Mr. Hesse. Foundation. You can 13 answer.</p> <p>14 A. It depends what transpired. You 15 are talking about the point where we have not 16 interviewed anybody yet. Maybe at a point --</p> <p>17 Q. I am talking about at any point 18 during the investigation that was undertaken 19 in connection with the Halloween incident, 20 don't you think it would have been important 21 for you to speak to, or Mr. Hesse to speak 22 with the alleged victims of the alleged 23 assault?</p> <p>24 MR. NOVIKOFF: Objection.</p> <p>25 A. Possibly.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 72 of 122

<p style="text-align: right;">Page 282</p> <p>1 Cherry</p> <p>2 Q. What do you mean by possibly?</p> <p>3 A. It may or may not be, it depends</p> <p>4 on the circumstances that happened prior to</p> <p>5 them being assaulted.</p> <p>6 Q. So you testified before that there</p> <p>7 was nothing in these statements that addressed</p> <p>8 what happened prior to the assaults; correct?</p> <p>9 MR. NOVIKOFF: Objection.</p> <p>10 A. That is correct.</p> <p>11 MR. NOVIKOFF: Mr. Cherry, you got</p> <p>12 to let Mr. Goodstadt ask the questions</p> <p>13 and you got to give me a couple of</p> <p>14 seconds to object and then you answer,</p> <p>15 or else the court reporter is going to</p> <p>16 shoot himself in the head.</p> <p>17 (Record read.)</p> <p>18 Q. And you were trying to figure out</p> <p>19 what happened leading up to the assaults;</p> <p>20 correct?</p> <p>21 A. Correct.</p> <p>22 Q. So don't you think it would be</p> <p>23 important to speak to the alleged victims of</p> <p>24 an assault to get their side of the story</p> <p>25 about what happened leading to the assault?</p>	<p style="text-align: right;">Page 284</p> <p>1 Cherry</p> <p>2 was and what happened prior to them being</p> <p>3 assaulted. I will give you one -- it may or</p> <p>4 may not have been important to speak to them.</p> <p>5 If you develop enough evidence that they</p> <p>6 committed a crime it may not be necessary to</p> <p>7 speak to them.</p> <p>8 Q. So you would rely on other</p> <p>9 people's statements without speaking to the</p> <p>10 alleged victims to have a complete picture of</p> <p>11 what happened that night?</p> <p>12 A. Yes.</p> <p>13 Q. Is it your testimony; right?</p> <p>14 A. I am not saying that they should</p> <p>15 not be interviewed, I am saying that we</p> <p>16 didn't. It may not be necessary depending on</p> <p>17 what evidence came forward.</p> <p>18 Q. Sitting here today knowing what</p> <p>19 evidence came forward don't you think it was</p> <p>20 important that you should have spoken with the</p> <p>21 alleged victims?</p> <p>22 MR. NOVIKOFF: Objection.</p> <p>23 A. No.</p> <p>24 MR. NOVIKOFF: You got to give me</p> <p>25 a chance to object.</p>
<p style="text-align: right;">Page 283</p> <p>1 Cherry</p> <p>2 MR. NOVIKOFF: Objection. You can</p> <p>3 answer.</p> <p>4 A. Well, the officers that responded</p> <p>5 should have gotten that.</p> <p>6 Q. But they didn't; correct?</p> <p>7 A. Correct.</p> <p>8 Q. So you were --</p> <p>9 MR. NOVIKOFF: Objection to that.</p> <p>10 You can answer the question.</p> <p>11 A. What was the question?</p> <p>12 Q. But they didn't; correct?</p> <p>13 A. Correct.</p> <p>14 MR. NOVIKOFF: Objection.</p> <p>15 Q. You were brought in to assist in</p> <p>16 an investigation of the incident?</p> <p>17 A. Correct.</p> <p>18 Q. Don't you think as part of your</p> <p>19 investigation that you should have gotten that</p> <p>20 information that you testified made the report</p> <p>21 incomplete?</p> <p>22 MR. NOVIKOFF: Objection.</p> <p>23 A. It would depend on what</p> <p>24 information you elicited from other witnesses.</p> <p>25 Depending on what happened, what the situation</p>	<p style="text-align: right;">Page 285</p> <p>1 Cherry</p> <p>2 Q. Why not?</p> <p>3 A. Because the person was convicted</p> <p>4 of a crime. He took a plea and he was</p> <p>5 convicted.</p> <p>6 Q. When was the person convicted?</p> <p>7 A. He pled guilty in court.</p> <p>8 Q. When?</p> <p>9 A. Mr. Van Koot.</p> <p>10 Q. When?</p> <p>11 A. I don't know the exact date.</p> <p>12 Q. Is it your testimony that if</p> <p>13 you --</p> <p>14 MR. NOVIKOFF: You asked him given</p> <p>15 what you know now. He answered the</p> <p>16 question because he now knows that they</p> <p>17 were convicted. Another question you</p> <p>18 could ask Andrew may be more appropriate,</p> <p>19 but he did answer your question.</p> <p>20 Q. So at any point prior to them</p> <p>21 being convicted did you think it would be</p> <p>22 important to speak to the alleged victims of</p> <p>23 an assault?</p> <p>24 MR. NOVIKOFF: Objection. Asked</p> <p>25 and answered. But you can answer.</p>

72 (Pages 282 to 285)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 73 of 122

<p>1 Cherry</p> <p>2 A. It may not be, no.</p> <p>3 Q. So prior to December 12th, the date that they took the plea, you don't believe that it would have been important to speak to the alleged victims of an assault -- of the assault during your investigation of what happened during that assault?</p> <p>9 MR. NOVIKOFF: Objection. Answer.</p> <p>10 A. The investigation showed that it 11 was not an assault, they were not assaulted. 12 That Gary acted in defense of a third person 13 and acted in self defense as far as our 14 investigation showed. Therefore it wouldn't 15 be necessary to talk to them.</p> <p>16 Q. You say as far as our 17 investigation showed?</p> <p>18 A. Yes.</p> <p>19 Q. That is based on statements made 20 by people other than the victims; is that 21 correct?</p> <p>22 A. That is correct.</p> <p>23 Q. So you never got, other than from 24 reading the incomplete statements, you never 25 got the victims' side of the story?</p>	<p>Page 286</p> <p>1 Cherry</p> <p>2 that you had on the morning of November 2nd?</p> <p>3 A. Yes.</p> <p>4 Q. And is this one of the statements 5 that you characterized as incomplete?</p> <p>6 A. Yes.</p> <p>7 Q. What is incomplete about the 8 statement?</p> <p>9 A. It doesn't say what they were 10 doing prior to him being hit in the face, or 11 if there was any reason to be hit in the face, 12 what was it. What was the -- my throat is 13 getting dry.</p> <p>14 MR. NOVIKOFF: Here is some water.</p> <p>15 Q. So sitting here today you don't 16 know what Mr. Van Koot's position is with 17 respect to what caused it; is that correct?</p> <p>18 A. Today I know.</p> <p>19 Q. You do know?</p> <p>20 A. Yes.</p> <p>21 Q. How do you know that?</p> <p>22 A. From the statements taken from the 23 other witnesses.</p> <p>24 Q. How do you know that, what Mr. Van 25 Koot's position was based on the statements</p>
<p>Page 287</p> <p>1 Cherry</p> <p>2 MR. NOVIKOFF: Objection to the 3 characterization. You can answer.</p> <p>4 A. It turned out they were not 5 victims.</p> <p>6 Q. Now, would you mark this as Cherry 7 Exhibit 9, report.</p> <p>8 (Cherry Exhibit 9, report, marked 9 for identification, as of this date.)</p> <p>10 Q. I placed in front of Mr. Cherry 11 what has been marked as Cherry Exhibit 9, a 12 one-page document bearing Bates number 3183.</p> <p>13 Mr. Cherry, do you recognize the 14 document that has been marked as 3183?</p> <p>15 A. This is a statement --</p> <p>16 MR. NOVIKOFF: The question is do 17 you recognize it?</p> <p>18 A. Yes, I recognize it.</p> <p>19 Q. What is it?</p> <p>20 A. Pardon me.</p> <p>21 Q. What is that document?</p> <p>22 A. A statement taken by Frank 23 Fiorillo from Brian Van Koot.</p> <p>24 Q. Was this one of the statements, 25 that is -- that was part of the documentation</p>	<p>Page 289</p> <p>1 Cherry</p> <p>2 taken from other witnesses?</p> <p>3 A. What his position was, because 4 Jeannie Jaegger said that Mr. Van Koot was -- 5 Mr. Van Koot had grabbed her throat and put 6 her up against the wall in the lady's room at 7 the Houser's Bar.</p> <p>8 Q. I am not talking about what his 9 physical position was in the bar, I am talking 10 about what his story is, what led up to the 11 assault?</p> <p>12 A. I mis-understood the question.</p> <p>13 Could you repeat the question.</p> <p>14 Q. Sitting here today you don't know 15 what Mr. Van Koot's position is or story was 16 as to what led to the assault; correct?</p> <p>17 A. Other than what I learned from the 18 statements taken from Jeannie Jaegger and 19 Elyse Myller.</p> <p>20 Q. Explain to me how you know what 21 Mr. Van Koot's story is, or his position is 22 based on statements by other people?</p> <p>23 A. It appears that from the 24 statements that he was in the lady's room with 25 a female. The people outside wanted to use</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 74 of 122

<p style="text-align: right;">Page 290</p> <p>1 Cherry 2 the bathroom, and it appears that he got upset 3 because they were knocking on the door to go 4 in, and he came out of the bathroom and 5 grabbed Jeannie Jaegger by the throat and 6 pushed her up against the wall because he was 7 being interrupted from whatever he was doing 8 in the lady's room.</p> <p>9 Q. I understand that that is a 10 conclusion that you reached based on Jeannie 11 Jaegger and Elyse Myller's statement.</p> <p>12 A. Right.</p> <p>13 Q. My question to you is you don't 14 know what Mr. Van Koot's story would be as to 15 what led up to the assault; correct?</p> <p>16 A. Based on this?</p> <p>17 Q. Based on anything?</p> <p>18 A. I don't know what -- this is 19 evidence, the statements gave us some idea of 20 what transpired.</p> <p>21 Q. I understand that you reached a 22 conclusion.</p> <p>23 A. Right, based on the statements.</p> <p>24 MR. NOVIKOFF: Hold on, let him 25 ask the question, say what he wants to</p>	<p style="text-align: right;">Page 292</p> <p>1 Cherry 2 to what he did.</p> <p>3 Q. That he knocked on the door and 4 strangled Jeannie Jaegger?</p> <p>5 (Record read.)</p> <p>6 A. I believe, I don't have the 7 allocution in front of me, I don't know if you 8 have, but he admitted to grabbing her by the 9 throat and throwing her up against the wall.</p> <p>10 Q. Were you there when he allocuted?</p> <p>11 A. No.</p> <p>12 Q. Do you know whether he was telling 13 that story as part of an allocution to accept 14 a plea, or is that what he actually believed 15 happened?</p> <p>16 MR. NOVIKOFF: Objection.</p> <p>17 A. He testified under oath, so I 18 assume that is what happened.</p> <p>19 Q. Just as you are testifying under 20 oath today; is that correct?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Prior to him allocuting you didn't 23 know what his explanation of the events 24 leading up to the assault were; is that 25 correct?</p>
<p style="text-align: right;">Page 291</p> <p>1 Cherry 2 say.</p> <p>3 Q. I understand that it is your 4 position that you reached a conclusion of what 5 transpired based on witness statements. My 6 question to you is not what conclusions you 7 reached, my question to you is sitting here 8 today you don't know what Mr. Van Koot's 9 explanation of the incidents that led to the 10 assault were; is that correct?</p> <p>11 MR. NOVIKOFF: Objection. Asked 12 and answered. You can answer.</p> <p>13 MR. GOODSTADT: It was answered, 14 but the question wasn't answered.</p> <p>15 A. I don't understand the question as 16 far as --</p> <p>17 Q. Let me give you a hypothetical.</p> <p>18 A. -- as far as Mr. Van Koot's 19 reason --</p> <p>20 Q. For example you don't know if 21 Mr. Van Koot agrees with the fact that 22 somebody knocked on the bathroom door, he was 23 interrupted and came out and strangled Jeannie 24 Jaegger; correct?</p> <p>25 A. When he pled guilty he allocuted</p>	<p style="text-align: right;">Page 293</p> <p>1 Cherry</p> <p>2 A. That is correct.</p> <p>3 Q. And you made no effort to find 4 out?</p> <p>5 A. No.</p> <p>6 Q. Correct?</p> <p>7 A. Right.</p> <p>8 MR. GOODSTADT: Would you mark 9 this document as Cherry Exhibit 10, 10 report.</p> <p>11 (Cherry Exhibit 10, report, marked 12 for identification, as of this date.)</p> <p>13 Q. Now I placed in front of 14 Mr. Cherry what is marked as Cherry Exhibit 15 10, it is a one-page document exhibit Bates 16 number 3185.</p> <p>17 Mr. Cherry, do you recognize the 18 document that has been marked as Cherry 19 Exhibit 10?</p> <p>20 A. This is a statement taken by Kevin 21 Lamm from Christopher Schalik.</p> <p>22 Q. Was this one of the documents that 23 were part of the packet of documentation that 24 you received the morning of the November 2nd 25 when you arrived at the police station?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 75 of 122

<p style="text-align: right;">Page 294</p> <p>1 Cherry 2 A. That I looked at, yes. 3 Q. Did you ever discuss with George 4 Hesse whether you should speak with the 5 alleged victims? 6 A. I didn't. 7 Q. Never had any discussions with him 8 whether you guys should as part of the 9 investigation speak with the alleged victims? 10 A. My part of the investigation was 11 to locate witnesses who eventually came 12 forward and interview them. Once those 13 statements were taken, the last one being 14 November 7th, that was the end of my 15 involvement in the case. 16 So we had no discussions about 17 whether to speak to the three -- the original 18 complainants or not. 19 Q. Would you mark this document as 20 Cherry Exhibit 11, report. 21 (Cherry Exhibit 11, report, marked 22 for identification, as of this date.) 23 Q. I placed in front of Mr. Cherry 24 what has now been marked as Cherry Exhibit 11, 25 a one-page document bearing Bates number 3186.</p>	<p style="text-align: right;">Page 296</p> <p>1 Cherry 2 Hesse on the 31st or 1st he never mentioned 3 that there was an allegation that someone had 4 been hit with a pool cue? 5 MR. NOVIKOFF: Objection. 6 A. Yes, I think he told me that. I 7 think I may have testified to that, that 8 someone accused Gary Bossetti of assaulting 9 someone with a pool cue. 10 Q. So reading this documentation was 11 not the first time that you learned that there 12 was an allegation that someone was hit with a 13 pool cue? 14 A. Right. 15 Q. Look back at Cherry Exhibit 10, if 16 you look at the end of the fifth line in the 17 body of the statement it says that he picked 18 up a pool stick and hit me with the pool stick 19 on my left arm causing the pool stick to 20 break. Do you see that? 21 A. Yes, I do. 22 Q. Would you mark as Cherry Exhibit 23 12, incident report. 24 (Cherry Exhibit 12, incident 25 report, marked for identification, as of</p>
<p style="text-align: right;">Page 295</p> <p>1 Cherry 2 Mr. Cherry, do you recognize this 3 document? 4 A. Yes, this is a statement taken by 5 Thomas Snyder from John A. Tesoro. 6 Q. You see that Mr. Tesoro alleges 7 that an unknown male grabbed a pool cue and 8 looked at him and then hit him in the head at 9 least twice and also in his right elbow. Do 10 you see that? 11 A. Where is this; this is in the body 12 of the statement? 13 Q. In the body of the statement? 14 MR. NOVIKOFF: What line? 15 Q. It starts on the end of the third 16 line. 17 MR. NOVIKOFF: Got it, okay. 18 A. Okay, I see that. 19 Q. Was that the first time that you 20 learned -- reading these statements is that 21 the first time that you learned that there was 22 an allegation that someone had been hit by a 23 pool cue? 24 A. Yes. 25 Q. So during your conversations with</p>	<p style="text-align: right;">Page 297</p> <p>1 Cherry 2 this date.) 3 Q. I now place in front of Mr. Cherry 4 what has been marked as Cherry Exhibit 12, 5 one-page exhibit Bates number 3184. 6 Mr. Cherry, do you recognize this 7 document that has been marked as Cherry 8 Exhibit 12? 9 A. Yes, I do. 10 Q. What is this document? 11 A. It is a field report prepared by 12 Thomas Snyder and reference to the incident 13 that happened in Houser's Bar. 14 Q. Was this part of the documentation 15 that was given to you the morning of November 16 2nd when you arrived at the police station? 17 A. Yes. 18 Q. Again this references that a pool 19 cue was used to hit two of the alleged 20 victims? 21 MR. NOVIKOFF: Objection. You can 22 answer. 23 A. Yes. 24 Q. And in the documentation that has 25 now been marked as Cherry 9, 10, 11 and 12, do</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 76 of 122

<p style="text-align: right;">Page 298</p> <p>1 Cherry 2 you see anywhere where it says that Gary 3 Bossetti assaulted somebody with a pool cue? 4 A. No. 5 Q. So based on your reading of the 6 statements that had come in that you got that 7 morning, that is not where you learned that 8 Gary Bossetti was alleged to have been the one 9 to have been using the pool cue, that was some 10 other source? 11 MR. NOVIKOFF: Objection. 12 A. George told me that Gary had been 13 fired for assaulting the people with the pool 14 cue. 15 Q. You learned that Gary Bossetti was 16 the person that was being charged, or who was 17 alleged to have hit somebody with a pool cue 18 through Hesse, not through the documentation; 19 is that correct? 20 MR. NOVIKOFF: Objection. 21 A. Yes. 22 MR. GOODSTADT: Would you mark 23 this document as Cherry Exhibit 13, 24 photocopy of a photograph. 25 (Cherry Exhibit 13, photocopy of a</p>	<p style="text-align: right;">Page 300</p> <p>1 Cherry 2 Q. Let me ask you, how did the 3 documents that have been marked in Cherry 9 4 through Cherry 13, how did those documents or 5 what role did those documents if any play in 6 your investigation? 7 A. The documents you just showed me, 8 they put the -- to be developed -- defendants 9 at the scene of the crime saying they were 10 assaulted and I think one of them indicates 11 that the person that was being assaulted, I 12 have to read these over, said that the person 13 who assaulted them said that he was a police 14 officer or a policeman, I don't remember the 15 exact verbiage. 16 Q. I think he is reviewing something 17 right now. 18 A. Yes. The male hitting me with the 19 pool cue said he was a cop. That is from the 20 statement of Exhibit 11. 21 Q. As part of your investigation did 22 you -- 23 A. Can I read the other two? 24 Q. Go ahead and read it. 25 A. Again the statement of Chris</p>
<p style="text-align: right;">Page 299</p> <p>1 Cherry 2 photograph, marked for identification, as 3 of this date.) 4 Q. I place in front of Mr. Cherry 5 what is marked as Cherry Exhibit 13, a 6 three-page document bearing Bates numbers 7 consecutively paginated 3187 to 3189. 8 Mr. Cherry, do you recognize these 9 documents that were marked as Exhibit 13? 10 A. Yes. 11 Q. What are these documents? 12 A. I believe these are pictures of 13 Mr. Van Koot that were taken by the officers 14 the night of the incident. 15 Q. Was this part of the documentation 16 that you received on November 2nd? 17 A. Yes. 18 MR. NOVIKOFF: Hold on one second, 19 I apologize. We have been doing this for 20 about two hours now, did I miss the 21 changing of the tape to go to tape 4? 22 THE VIDEOGRAPHER: The last break 23 we changed. 24 MR. NOVIKOFF: Thanks. 25 (Record read.)</p>	<p style="text-align: right;">Page 301</p> <p>1 Cherry 2 Schalik, Exhibit number 10, also indicates 3 that the person who was hitting him saying he 4 was a cop approximately ten times. 5 Q. I believe the question is what 6 role in your investigation did those 7 statements play? 8 MR. NOVIKOFF: Are you done with 9 the question? 10 MR. GOODSTADT: That is the 11 question. 12 MR. NOVIKOFF: Objection, you may 13 answer. 14 A. What role the statements helped us 15 with this investigation; is that correct? 16 Q. Yes. 17 A. It indicated that the person who 18 allegedly assaulted the three people, two of 19 the statements as indicated alleged that the 20 person said he was a cop. In the 21 investigation Gary never, you know, he 22 identified himself as a police officer to 23 these people. 24 It was my understanding reviewing 25 these statements that Gary -- what I</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 77 of 122

<p style="text-align: right;">Page 302</p> <p>1 Cherry 2 determined from these statements that we took 3 from the other witnesses that Gary went to aid 4 Jeannie Jaegger, got into an alteration with 5 Van Koot. Van Koot's friends seeing the 6 altercation intervened instead of breaking up 7 the fight, they assaulted Gary Bossetti. 8 That was the outcome of my take on 9 the investigation, or what was showed me.</p> <p>10 Q. Did you discredit anything in 11 those witness statements that have been marked 12 as 9, 10 and 11?</p> <p>13 MR. NOVIKOFF: You can answer the 14 question. If you need to read the 15 statements.</p> <p>16 MR. GOODSTADT: He just read them. 17 But he can read them again.</p> <p>18 A. No, they say they were assaulted. 19 The investigation in my opinion showed that 20 Gary Bossetti was defending himself against a 21 three person assault.</p> <p>22 Q. Did you believe that Gary Bossetti 23 choked Brian Van Koot?</p> <p>24 MR. NOVIKOFF: Objection. You can 25 answer.</p>	<p style="text-align: right;">Page 304</p> <p>1 Cherry 2 A. I don't know. 3 Q. So you didn't reach a conclusion 4 one way or the other? 5 A. No. In the part of the 6 investigation that I had I didn't interview 7 Officer Bossetti, I don't know what actions he 8 took to defend himself. 9 Q. Did you speak to Officer Bossetti 10 at all as part of the investigation? 11 A. I didn't, no. 12 Q. Did you speak to his brother 13 Richard Bossetti at al as part of the 14 investigation? 15 A. No. 16 Q. Just so I am clear here, so you 17 didn't speak to any of the parties who were 18 actually involved in the alleged assault, 19 meaning that were part of the fight? 20 A. That is correct. 21 Q. And did you believe that 22 Christopher Schalik had been hit in the arm 23 with a pool cue that caused the pool cue to 24 break? 25 A. I don't know.</p>
<p style="text-align: right;">Page 303</p> <p>1 Cherry 2 A. I don't know. I know he was 3 defending himself against an assault. I don't 4 know what action he took to ward off the 5 assault, whether that is true or not. 6 Q. So you didn't have an opinion as 7 part of your investigation one way or the 8 other as to whether Gary Bossetti choked Brian 9 Van Koot? 10 A. In defending himself he may have, 11 I don't know. I don't know. 12 Q. Is there a level of force in your 13 mind that is acceptable for a police officer 14 to defend himself? 15 MR. NOVIKOFF: Objection. You can 16 answer. 17 A. Yes. 18 Q. Is there a level of force in your 19 mind that is unacceptable for a police officer 20 to defend himself? 21 A. Yes. 22 MR. NOVIKOFF: Objection. 23 Q. Do you believe that Mr. Bossetti, 24 Gary Bossetti, hit John Tesoro with a pool cue 25 in the hit?</p>	<p style="text-align: right;">Page 305</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 A. Same answer that I gave before, I 4 don't know. 5 Q. So you didn't reach a conclusion 6 one way or the other? 7 MR. NOVIKOFF: Objection. 8 A. I don't know what actions Officer 9 Bossetti took to defend himself. 10 Q. Did you ever speak with anybody 11 from Ocean Beach Rescue about the Halloween 12 incident? 13 A. No. 14 Q. Did you ever speak to Joe Loeffler 15 about the Halloween incident? 16 A. No. During the investigation 17 timeframe? 18 Q. At any point in time? 19 A. Other than when the suit came up, 20 they said there is an allegation that the -- 21 we were covering up a brutality case to the 22 Halloween incident. I said I couldn't 23 understand what -- what they could possibly 24 say that we covered up. 25 Q. Did Joe Loeffler tell you that he</p>

77 (Pages 302 to 305)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 78 of 122

<p style="text-align: right;">Page 306</p> <p>1 Cherry</p> <p>2 was there the night of Halloween?</p> <p>3 MR. NOVIKOFF: Objection.</p> <p>4 A. I don't recall.</p> <p>5 Q. As you sit here today you don't</p> <p>6 know that Joseph Loeffler actually drove the</p> <p>7 ambulance on the night of the Halloween</p> <p>8 incident?</p> <p>9 MR. NOVIKOFF: Objection.</p> <p>10 A. He told me or somebody told me</p> <p>11 that he drove the ambulance. I am not sure</p> <p>12 who or when I was told that. It was probably</p> <p>13 sometime after the initial investigation.</p> <p>14 Q. So as part of the investigation</p> <p>15 you didn't know that Joseph Loeffler drove the</p> <p>16 ambulance?</p> <p>17 MR. NOVIKOFF: Objection.</p> <p>18 A. No.</p> <p>19 Q. Did you ever hear that Joe</p> <p>20 Loeffler that night said that he believed what</p> <p>21 happened to Mr. Van Koot to be an assault</p> <p>22 second?</p> <p>23 MR. NOVIKOFF: Objection.</p> <p>24 A. I know -- I recall somebody saying</p> <p>25 that, but I don't know when I learned that.</p>	<p style="text-align: right;">Page 308</p> <p>1 Cherry</p> <p>2 the best of my recollection. I took a</p> <p>3 statement from Sean O'Rourke, I am not quite</p> <p>4 sure on the date, I don't know if it was</p> <p>5 November -- I am not sure of the date on Sean</p> <p>6 O'Rourke. I also interviewed Ian Levine, or</p> <p>7 took statements from him.</p> <p>8 Q. Do you know what date that was?</p> <p>9 A. I am not quite sure of the date.</p> <p>10 I believe it was sometime between the 2nd and</p> <p>11 7th.</p> <p>12 Q. And other than for taking those</p> <p>13 statements or receiving those statements and</p> <p>14 making those phone calls what else did you do</p> <p>15 on November 2nd in connection with your</p> <p>16 investigation?</p> <p>17 A. I am not sure if I -- I may have</p> <p>18 taken a statement from one of the -- either</p> <p>19 the -- either Ian Levine or Sean O'Rourke on</p> <p>20 that date, but I am not sure which one.</p> <p>21 Q. Did you do anything else as part</p> <p>22 of the investigation on that day.</p> <p>23 A. I checked all three of the Van</p> <p>24 Koot -- all three of the people involved for</p> <p>25 warrants and prior records, and I think I made</p>
<p style="text-align: right;">Page 307</p> <p>1 Cherry</p> <p>2 Q. Do you recall who said it?</p> <p>3 A. No.</p> <p>4 Q. Do you recall when you learned it?</p> <p>5 A. No.</p> <p>6 Q. During your investigation were you</p> <p>7 aware that one of the alleged victims, meaning</p> <p>8 Schalik, Tesoro or Van Koot, pointed to</p> <p>9 Richard Bossetti in the bar and said the</p> <p>10 person who assaulted us looked like him?</p> <p>11 MR. NOVIKOFF: Objection.</p> <p>12 A. I may have read that in one of the</p> <p>13 officers statements after the investigation,</p> <p>14 but not prior to that.</p> <p>15 Q. And not during your investigation?</p> <p>16 A. No.</p> <p>17 Q. Who did you interview as part of</p> <p>18 the investigation?</p> <p>19 A. I spoke to Jeannie Jaegger over</p> <p>20 the telephone I believe on November 2nd, and I</p> <p>21 interviewed her at her home on November 7th I</p> <p>22 believe. I interviewed Elyse Myller on the</p> <p>23 phone.</p> <p>24 Q. What date was that?</p> <p>25 A. That was on November 2nd also to</p>	<p style="text-align: right;">Page 309</p> <p>1 Cherry</p> <p>2 a note on that. I think one had a failure to</p> <p>3 appear on an alcohol violation or something</p> <p>4 like that, or an open alcohol violation.</p> <p>5 Other than that there was no priors, no</p> <p>6 arrests.</p> <p>7 Q. Why did you do that check?</p> <p>8 A. Just a routine to see who I was</p> <p>9 dealing with. Routine matter.</p> <p>10 Q. Did you do a check on priors for</p> <p>11 the witnesses whose statements you were</p> <p>12 taking?</p> <p>13 A. No.</p> <p>14 Q. So is it routine to take a</p> <p>15 background check or a check of priors for</p> <p>16 complainants?</p> <p>17 A. Well, I just checked to see if</p> <p>18 they had any criminal background. For</p> <p>19 complainants, not normally no.</p> <p>20 Q. So why did you do it for the three</p> <p>21 of them?</p> <p>22 A. I wanted to see what their</p> <p>23 background was.</p> <p>24 Q. Why?</p> <p>25 A. That is what I do usually before I</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 79 of 122

<p>1 Cherry 2 interview a witness. Sometimes I will check 3 the background to see what -- if I don't know 4 them or if I don't have any dealings with them 5 before just to see what their backgrounds are. 6 Q. Sir, you just testified that you 7 didn't interview the three of them? 8 A. I didn't. 9 MR. NOVIKOFF: Objection. 10 Q. What do you mean you do a 11 background check of a witness before you 12 interview them? 13 A. I did a background check on them 14 to see what their priors were because I was 15 curious, I wanted to see if they had any 16 priors. 17 Q. So now you are saying because you 18 were curious and -- 19 MR. NOVIKOFF: Objection. You can 20 answer. 21 Q. Now you are saying because you 22 were curious and you objected. 23 MR. NOVIKOFF: I apologize. 24 Q. You told him he could answer it. 25 Before you said that you checked</p>	<p>Page 310</p> <p>1 Cherry 2 background? 3 A. No. 4 Q. Did you check Elyse Myller's 5 background? 6 A. No. 7 Q. Why not? 8 A. I just wanted to see the people we 9 were dealing with, the three other people who 10 were in the fight, had any priors. That is 11 just something that I did. 12 Q. Did you check Richard Bossetti's 13 background? 14 A. No. He is a police officer, why 15 would I check his background? 16 Q. Was he a certified police officer 17 at the time? 18 MR. NOVIKOFF: Objection. 19 A. I didn't check his background. 20 Q. Did anyone tell you to check their 21 background or you did it on your own? 22 A. My own. 23 Q. How did you go about checking 24 their background? 25 A. I am not sure now, I called the</p>
<p>1 Cherry 2 the background, and I asked why. You said you 3 usually check the background of a witness 4 before you interview them; is that correct? 5 A. I said that, yes. 6 Q. Then I said you didn't interview 7 these guys? 8 A. Right. 9 Q. Correct? 10 A. Correct. 11 MR. NOVIKOFF: Objection. 12 Q. So why did you check their 13 backgrounds? 14 A. I wanted to see if they had any 15 prior incidents. 16 Q. The question is why? 17 MR. NOVIKOFF: Objection. 18 A. I just did. 19 Q. Did you check Sean O'Rourke's 20 background? 21 A. No. 22 Q. Did you check Jeannie Jaeger's 23 background? 24 A. No. 25 Q. Did you check Budd Jaeger's</p>	<p>Page 311</p> <p>1 Cherry 2 Sheriff or the Suffolk County Records Bureau, 3 I am not sure which, and asked for a 4 background check for priors and warrants. 5 Q. When you called over there did you 6 hold yourself out to be a police officer? 7 A. Yes. 8 Q. So myself who is not a police 9 officer can't just call up and get a 10 background check; is that correct? 11 A. That is correct. 12 MR. GOODSTADT: Would you mark 13 this handwritten note, Cherry Exhibit 14, 14 handwritten note. 15 (Cherry Exhibit 14, handwritten 16 note, marked for identification, as of 17 this date.) 18 Q. I placed in front of Mr. Cherry 19 what is now marked as Cherry Exhibit 14, a 20 one-page document exhibit with the Bates 21 number 3179. 22 A. Yes. 23 Q. Mr. Cherry, do you recognize this 24 document? 25 A. Yes, sir.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 80 of 122

<p style="text-align: right;">Page 314</p> <p>1 Cherry</p> <p>2 Q. What is this document?</p> <p>3 A. This is notes I took on the</p> <p>4 warrant checks, prior checks for the three</p> <p>5 subjects in this case.</p> <p>6 Q. Did you take these as you were on</p> <p>7 the phone with the sheriff or whoever you</p> <p>8 spoke with?</p> <p>9 A. Yes. Suffolk County.</p> <p>10 Q. Did you do any background checks</p> <p>11 of anybody else as part of your investigation</p> <p>12 aside from these three people?</p> <p>13 A. No.</p> <p>14 Q. Were you aware that Sean O'Rourke</p> <p>15 had been arrested for cocaine possession in</p> <p>16 Ocean Beach?</p> <p>17 A. Yes, I was.</p> <p>18 Q. Are you aware whether he had ever</p> <p>19 been arrested prior to that time?</p> <p>20 A. No.</p> <p>21 Q. Were you aware whether there were</p> <p>22 any outstanding warrants?</p> <p>23 A. No.</p> <p>24 Q. I believe you also testified that</p> <p>25 there was a statement in the documentation</p>	<p style="text-align: right;">Page 316</p> <p>1 Cherry</p> <p>2 Q. Do you know whether Ms. Myller</p> <p>3 came forward on her own to provide a</p> <p>4 statement?</p> <p>5 A. I am not sure. I am not sure.</p> <p>6 Q. So you don't know whether somebody</p> <p>7 requested that from her or whether she did it</p> <p>8 on her own?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know whether George Hesse</p> <p>11 had any relationship with Elyse Myller?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. Never heard that he had any sexual</p> <p>14 relationship with her?</p> <p>15 A. No.</p> <p>16 Q. Do you know who Mitch Burns is?</p> <p>17 A. No. I don't know -- last name?</p> <p>18 Q. Burns?</p> <p>19 A. No.</p> <p>20 Q. Never heard of Mitchell Burns?</p> <p>21 A. No.</p> <p>22 Q. I am going to ask you some</p> <p>23 questions about it, you can read it if you</p> <p>24 want?</p> <p>25 MR. NOVIKOFF: You need him to</p>
<p style="text-align: right;">Page 315</p> <p>1 Cherry</p> <p>2 that you received the morning of the 2nd from</p> <p>3 Elyse Myller; is that right?</p> <p>4 A. That is correct.</p> <p>5 Q. Is that a handwritten statement or</p> <p>6 was it typed?</p> <p>7 A. I believe it was a handwritten</p> <p>8 statement.</p> <p>9 Q. When these documents were given to</p> <p>10 you were they in some kind of a file, what</p> <p>11 form were they given to you?</p> <p>12 A. In a file folder like that.</p> <p>13 Q. In a manila folder like this?</p> <p>14 A. Yes.</p> <p>15 MR. GOODSTADT: Would you mark</p> <p>16 this as Cherry Exhibit 15, handwritten</p> <p>17 document.</p> <p>18 (Cherry Exhibit 15, handwritten</p> <p>19 document, marked for identification, as</p> <p>20 of this date.)</p> <p>21 Q. Mr. Cherry, do you know why -- do</p> <p>22 you know how Mr. Hesse had possession of a</p> <p>23 statement prior to the time that you got there</p> <p>24 on the 2nd?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 317</p> <p>1 Cherry</p> <p>2 read it?</p> <p>3 MR. GOODSTADT: Yes, I have a</p> <p>4 bunch of questions.</p> <p>5 MR. NOVIKOFF: Why don't you just</p> <p>6 say if you recognize this document. If</p> <p>7 you need to read it to recognize it, then</p> <p>8 read it.</p> <p>9 A. I recognize it.</p> <p>10 Q. What is this document that has</p> <p>11 been marked as Cherry Exhibit 15, it is --</p> <p>12 MR. NOVIKOFF: 3169 through 3175.</p> <p>13 A. You want me to read the whole</p> <p>14 thing?</p> <p>15 Q. Just for the record what is it?</p> <p>16 A. It is a statement addressed to</p> <p>17 George from Elyse Myller dated November 1,</p> <p>18 2004.</p> <p>19 Q. This is the handwritten statement</p> <p>20 that you testified was part of the package of</p> <p>21 information that you received on the 2nd?</p> <p>22 A. Yes.</p> <p>23 Q. Was this the only --</p> <p>24 MR. NOVIKOFF: The record reflects</p> <p>25 that on the first page it says November</p>

80 (Pages 314 to 317)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 81 of 122

<p style="text-align: right;">Page 318</p> <p>1 Cherry 2 1, 2004. On the last page it appears to 3 be notarized by someone with a November 4 2nd date. So go on.</p> <p>Q. Other than for the statements from the alleged victims of the assault, were there any statements in the file when you got there other than for Ms. Miller's statement?</p> <p>A. There was the memo from Jeannie Jaegger --</p> <p>Q. From Budd Jaegger?</p> <p>A. From Budd Jaegger, and I believe there was a fax copy of a statement from Jeannie Jaegger.</p> <p>Q. Why don't you take a couple of minutes to read this?</p> <p>A. Okay.</p> <p>MR. GOODSTADT: Go off the record.</p> <p>THE VIDEOGRAPHER: The time is 4 o'clock. We are going off the record. (Recess taken.)</p> <p>THE VIDEOGRAPHER: The time is 4:30. We are back on the record.</p> <p>Q. I don't know if I asked this already, but I will ask it again. Do you</p>	<p style="text-align: right;">Page 320</p> <p>1 Cherry 2 A. No. 3 Q. Did you ever discuss with George 4 the fact that he may have requested Ms. Myller 5 to put together a statement and provide it to 6 him?</p> <p>7 A. No. 8 Q. Do you know whether Ms. Myller was 9 drinking that night?</p> <p>10 A. I do not know. 11 Q. Never asked her? 12 A. No. 13 Q. Do you think that is important to 14 know whether somebody who is giving a witness 15 statement may have been intoxicated at the 16 time of the events that they are giving a 17 statement about?</p> <p>18 MR. NOVIKOFF: Objection. 19 A. It might be important. 20 Q. What do you mean? 21 A. It might be important depending on 22 what kind of statement she gave. It seems to 23 be fairly complete. I don't know if she was 24 drinking or not.</p> <p>25 Q. So your -- you draw the line as to</p>
<p style="text-align: right;">Page 319</p> <p>1 Cherry 2 recognize the document that has been marked as 3 Cherry Exhibit 15? 4 A. Yes, I do. 5 Q. This was the statement that was 6 provided by Elyse Myller that was in the 7 package of documents that you received on 8 November 2nd; is that correct? 9 A. Yes. 10 Q. If you look at the first sentence, 11 or the salutation is George, do you know who 12 that is referring to? 13 A. I believe it is George Hesse. 14 Q. First sentence says: As per your 15 request I am writing to recap the events as I 16 remember them. 17 Do you see that? 18 A. Yes. 19 Q. Do you know whether George 20 actually requested that Elyse Myller provide a 21 statement? 22 A. Do I know that for a fact, no, I 23 don't know. 24 Q. So you don't know what she is 25 referring to when she says per your request?</p>	<p style="text-align: right;">Page 321</p> <p>1 Cherry 2 whether it is important if a person was 3 drinking or not as to whether the statement is 4 complete? 5 MR. NOVIKOFF: Objection. 6 A. It would depend on how much she 7 was drinking or whether she was intoxicated 8 or -- a person who has a couple of drinks may 9 be able to give a statement that is adequate 10 for the investigation. I don't know what her 11 situation was that night. 12 Q. You didn't attempt to find out; 13 correct? 14 A. Correct. 15 Q. How come? 16 A. I didn't speak to her originally. 17 Q. Well, you spoke to her on November 18 2nd? 19 A. Yes. 20 Q. How come you didn't ask her then, 21 were you drinking Ms. Miller? 22 A. It just didn't come to mind. 23 Q. It didn't come to mind that 24 somebody who was attending a Halloween party 25 may have been drinking?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 82 of 122

<p style="text-align: right;">Page 322</p> <p>1 Cherry 2 MR. NOVIKOFF: Objection. 3 A. Its a possibility, yes. Q. Was it something that you just 4 didn't deem to be relevant or just something 5 that didn't come to mind? 6 MR. NOVIKOFF: Objection. 7 A. It didn't come to mind. Q. Sitting here today do you think it 8 is relevant as to whether Ms. Myller was 9 drinking that night? 10 MR. NOVIKOFF: Objection. 11 A. Possibly. Q. What do you mean by possibly? 12 A. It may be relevant, it may not be 13 relevant. Q. If she was intoxicated would that 14 be relevant? 15 MR. NOVIKOFF: Objection. 16 A. It may be. Q. Would that affect the weight that 17 you would put on her statement? 18 MR. NOVIKOFF: Objection. 19 A. Possibly. Q. Do you know how this statement was</p>	<p style="text-align: right;">Page 324</p> <p>1 Cherry 2 somebody notarized her signature at some point 3 after she signed? 4 MR. NOVIKOFF: Objection. I don't 5 know if that is his testimony. 6 A. That wasn't my testimony. I said 7 go to a notary, do what you have to do to be 8 valid, and notarize it and send it to us. I 9 don't know what the notary would do to 10 validate her signature. Q. Was the version that you had that 11 didn't have the notary, did it have her 12 signature on it? 13 A. Yes. Q. Do you know -- 14 A. To the best of my recollection. Q. Do you know what happened to that 15 copy that was not notarized? 16 A. I don't know. 17 RQ MR. GOODSTADT: I would like to 18 mark the record here, to the extent it 19 has not been produced, again I represent 20 I have not seen it, we ask for 21 production of the original version that 22 was in the possession of Mr. Hesse and</p>
<p style="text-align: right;">Page 323</p> <p>1 Cherry 2 delivered to Mr. Hesse? 3 A. No. Q. Do you know when it was delivered 4 to Mr. Hesse? 5 A. No. Q. Again your lawyer has already 6 pointed this out, but if you could turn to the 7 last page it appears to be notarized on 8 November 2, 2004, do you see that? 9 A. Yes, I do. Q. So you don't know if this was 10 provided before or after the date it was 11 notarized? 12 A. Yes, I do. I spoke to Elyse 13 Myller, I believe there is another copy 14 without the notary stamp on it. I asked her 15 if she had the original of the statement that 16 she wrote to George Hesse, and she said she 17 did. I asked her to have it notarized and 18 send us the original. Q. So the copy that you had in front 19 of you at the time wasn't notarized? 20 A. Yes. Q. Is it your testimony, sir, that</p>	<p style="text-align: right;">Page 325</p> <p>1 Cherry 2 Mr. Cherry. 3 MR. NOVIKOFF: Like I said that 4 would seem to be a document that if we 5 have it, the Village has it it should 6 have been produced, and just remind me 7 after the deposition by letter and we 8 will try to ascertain it. Q. Prior to November 1, 2004 did you 9 know who Elyse Myller was? 10 A. No. Q. Never met her before? 11 A. Not to my knowledge. Q. Have you ever met her 12 face-to-face? 13 A. Since then? Q. Yes. 14 A. Yes. Q. So now that you have met her do 15 you have an opinion as to whether you knew her 16 before November 1st, or you knew who she was 17 before November 1st? 18 A. I don't believe so. Q. When did you meet her 19 face-to-face?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 83 of 122

<p style="text-align: right;">Page 326</p> <p>1 Cherry</p> <p>2 A. She is a -- she rents out there, 3 she rents a house out there, and I was 4 introduced to her I guess a year -- this is 5 2005, and I see her out there occasionally and 6 walking around, biking around.</p> <p>7 Q. Who were you introduced by?</p> <p>8 A. I don't know if it was George who 9 introduced me to her.</p> <p>10 Q. So it may have been George Hesse 11 who introduced her?</p> <p>12 A. It may have been somebody else, I 13 don't remember who introduced us.</p> <p>14 Q. If you look at her statement on 15 page 1, if you look down five lines up from 16 the bottom, it says I believe at this point, 17 you see that?</p> <p>18 A. Yes.</p> <p>19 Q. It says: I believe at this point 20 others were now waiting behind us and a line 21 was now forming. 22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know who was standing 25 behind them?</p>	<p style="text-align: right;">Page 328</p> <p>1 Cherry</p> <p>2 A. Yes.</p> <p>3 MR. NOVIKOFF: Where are you -- 4 yes, I see it.</p> <p>5 Q. At that point the guy in the 6 orange jump suit reached for Jean's throat. 7 He was going to choke her. Do you see that?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Did you ask Elyse Myller whether 10 the guy in the orange jump suit was going to 11 choke her, or whether he actually choked her?</p> <p>12 A. I believe further on in the 13 statement it says that the assault -- I think 14 it is on the page -- the answer is yes, he 15 said he had her by the throat up against the 16 wall. I believe it says it somewhere --</p> <p>17 MR. NOVIKOFF: Note my objection 18 to the question.</p> <p>19 A. Page 6, the sentence above the 20 last paragraph: Gary no doubtedly prevented 21 an attack on Jean, one that was already in 22 progress and very real.</p> <p>23 Q. How do you know that she was 24 referring to the choking when she says one 25 that was already in progress?</p>
<p style="text-align: right;">Page 327</p> <p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. Did you make any effort to find 4 out who was on that line that Jeannie Jaegger 5 allegedly was choked?</p> <p>6 A. No.</p> <p>7 Q. How come?</p> <p>8 A. I just didn't.</p> <p>9 Q. You think that was important, 10 maybe there would be other witnesses who saw 11 the alleged choking?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 A. It depends on what they saw, I 14 guess possibly.</p> <p>15 Q. But you didn't make an effort to 16 find out what they saw; is that correct?</p> <p>17 A. No.</p> <p>18 Q. Not correct or is correct?</p> <p>19 A. That is correct. I wasn't at the 20 scene that night either.</p> <p>21 Q. If you look at the page 2, 22 thirteen lines down.</p> <p>23 A. Okay.</p> <p>24 Q. It says at that point, do you see, 25 the sentence that starts at that point?</p>	<p style="text-align: right;">Page 329</p> <p>1 Cherry</p> <p>2 MR. NOVIKOFF: Note my objection.</p> <p>3 You can answer.</p> <p>4 A. Gary no doubtedly prevented an 5 attack on Jean, one that was already in 6 progress and very real.</p> <p>7 Q. How do you know that that refers 8 to a choking?</p> <p>9 A. This one says going to choke her, 10 reached for Jean's throat and he was going to 11 choke her. I am sure I asked her, I can't 12 recall whether I -- whether I -- if I asked 13 her -- I can't recall asking, but I am sure I 14 said did he attempt to choke her or did he 15 choke her.</p> <p>16 MR. NOVIKOFF: I am just going to 17 note for the record that I am not going 18 to read page 2, but I think you read in 19 an incomplete part of the statement, 20 counselor, on page 2, but I am not going 21 to read into it, into the record anything 22 else.</p> <p>23 MR. GOODSTADT: I am not sure what 24 you are referring to, but it speaks for 25 itself. The document speaks for itself.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 84 of 122

<p style="text-align: center;">Page 330</p> <p>1 Cherry 2 MR. NOVIKOFF: Right, that is why 3 I didn't feel a need to read into it. It 4 does speaks for itself. 5 Q. What makes you so sure that you 6 asked her was he choking her or was he about 7 to choke her? 8 A. Because I think that would be an 9 important fact, whether he has his hand around 10 her neck or not. 11 Q. Do you assume asking that or do 12 you recall asking that? 13 MR. NOVIKOFF: Objection. 14 A. I don't recall, but that would be 15 a key element to whether it was an assault or 16 an harassment, depending on how much physical 17 injury was sustained by the person who is 18 being choked or grabbed by the throat. I 19 think I would have asked that. I don't recall 20 asking that, but there is no doubt that I 21 would. 22 Q. Did you take any notes of that 23 phone conversation? 24 A. No, I did not. 25 Q. Let me understand this. You</p>	<p style="text-align: center;">Page 332</p> <p>1 Cherry 2 that were not clear on her statement; correct? 3 MR. NOVIKOFF: Objection. 4 A. To the best of my recollection, 5 you know, I assume I asked her questions, we 6 were going over it. I just wasn't reading it 7 to her and saying what happened. I was trying 8 to elicit some more information. I don't have 9 any notes, I don't remember what she said, it 10 was four years ago. But I would certainly say 11 did he reach for her, or did he actually have 12 his hands around her neck. 13 Q. But you don't recall actually 14 asking that? 15 A. No. 16 Q. You don't recall her telling you 17 the answer to that question? 18 A. No, I don't recall. 19 Q. Why didn't you take any notes? 20 A. I didn't think it was necessary. 21 I mean she is available to clarify her own 22 statement if it goes to trial. 23 Q. That is fair if that is what you 24 are going to go with? 25 A. It is a statement --</p>
<p style="text-align: center;">Page 331</p> <p>1 Cherry 2 called up the witness to this allege assault, 3 how long did you speak to her for? 4 MR. NOVIKOFF: The assault we are 5 talking about is the assault on that 6 woman? 7 Q. On the Halloween incident. 8 MR. NOVIKOFF: Okay. 9 Q. You spoke to a witness with 10 respect to the Halloween incident; is that 11 correct? 12 A. Yes. 13 Q. You called her; is that correct? 14 A. Yes. 15 Q. How long did you speak to her for? 16 A. I would say ten minutes, fifteen 17 minutes maybe. 18 Q. Did any of the substance of what 19 she told you on that telephone call play any 20 role into your investigation? 21 A. Yes. 22 Q. You didn't take any notes? 23 A. No, I was going over the 24 statement. 25 Q. But you were asking her questions</p>	<p style="text-align: center;">Page 333</p> <p>1 Cherry 2 MR. NOVIKOFF: There is no 3 question, just a gratuitous comment by 4 counsel trying to elicit a response. 5 Q. If you look at the bottom of page 6 3? 7 A. Okay. 8 MR. NOVIKOFF: Start by now? 9 Q. Yes: By now several people were 10 involved, though oddly no on duty cops had 11 arrived. 12 Do you see that? 13 A. Yes. 14 Q. It says: Richie was there and had 15 his wallet open, he was showing his badge. 16 Do you see that? 17 A. Yes. 18 Q. Did you try to verify whether 19 Richie came over to where the fight was and 20 show his badge? 21 A. With Elyse? 22 Q. Yes. 23 A. I don't recall. 24 Q. Did you try to verify that with 25 anybody?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 85 of 122

<p style="text-align: right;">Page 334</p> <p>1 Cherry</p> <p>2 A. I didn't, no.</p> <p>3 Q. So you did nothing to verify</p> <p>4 whether that was true?</p> <p>5 MR. NOVIKOFF: Objection.</p> <p>6 A. No, I didn't interview Richie.</p> <p>7 Q. I didn't ask you that.</p> <p>8 Did you do anything to verify that</p> <p>9 that was true?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 A. I didn't, no.</p> <p>12 Q. Now, if you look on page 4, it</p> <p>13 says on line -- five lines down, it says:</p> <p>14 There were as I said a lot of people involved</p> <p>15 by now, and my recollection of the events are</p> <p>16 sketchy.</p> <p>17 Do you see that?</p> <p>18 A. Yes, I do.</p> <p>19 Q. That raise any issues with you</p> <p>20 that she is saying that her recollection of</p> <p>21 the events are sketchy?</p> <p>22 A. No. I mean it is part of her</p> <p>23 statement. Again if she was going to testify</p> <p>24 that would be put up, somebody might ask her</p> <p>25 about that, what she meant by sketchy.</p>	<p style="text-align: right;">Page 336</p> <p>1 Cherry</p> <p>2 obviously over.</p> <p>3 The next sentence says: The on</p> <p>4 duty officers were busy talking to people and</p> <p>5 collecting information both inside and</p> <p>6 outside.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know whether that statement</p> <p>10 that the officers on duty were busy collecting</p> <p>11 information both inside and outside</p> <p>12 contradicts any other witness statements in</p> <p>13 the case?</p> <p>14 A. That is her opinion of what was</p> <p>15 going on, I don't know if it contradicts what</p> <p>16 other people said. They had their view of the</p> <p>17 version of the incident and she had hers. She</p> <p>18 doesn't know what they were talking to them</p> <p>19 about.</p> <p>20 Q. I understand that, but the fact</p> <p>21 that she is swearing under oath that the</p> <p>22 officers, the on duty officers were busy</p> <p>23 talking to people and collecting information</p> <p>24 both inside and outside.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 335</p> <p>1 Cherry</p> <p>2 Q. Did you ask her what she meant by</p> <p>3 sketchy?</p> <p>4 A. No.</p> <p>5 Q. Did the fact that she admitted</p> <p>6 that her recollection was sketchy have any</p> <p>7 weight in the conclusions that you reached?</p> <p>8 MR. NOVIKOFF: Objection.</p> <p>9 A. No.</p> <p>10 Q. Did you credit her statement in</p> <p>11 the conclusions that you reached?</p> <p>12 MR. NOVIKOFF: Objection.</p> <p>13 Q. Did you credit her statement in</p> <p>14 the conclusions that you reached?</p> <p>15 A. Did I credit her statement?</p> <p>16 Q. Yes.</p> <p>17 A. It was part of it, yes.</p> <p>18 Q. So you believed that her statement</p> <p>19 was credible?</p> <p>20 A. Yes.</p> <p>21 Q. Now, if you look at paragraph 3 on</p> <p>22 page 4?</p> <p>23 A. Okay.</p> <p>24 Q. You see where it says: By now,</p> <p>25 everything was pretty calm, the party/fun was</p>	<p style="text-align: right;">Page 337</p> <p>1 Cherry</p> <p>2 MR. NOVIKOFF: Objection.</p> <p>3 Q. My question is whether that</p> <p>4 contradicted any other witness statements that</p> <p>5 you took or read in this matter?</p> <p>6 MR. NOVIKOFF: Objection.</p> <p>7 Specifically to the characterization of</p> <p>8 swearing under oath.</p> <p>9 MR. GOODSTADT: Well, it is</p> <p>10 notarized, isn't it?</p> <p>11 MR. NOVIKOFF: I don't know what</p> <p>12 that means. All that means to my</p> <p>13 knowledge is that the notary verified</p> <p>14 that the person who signed it was the</p> <p>15 person whose signature is on the</p> <p>16 document. That is my objection.</p> <p>17 A. As I said this was her statement.</p> <p>18 Other people's statements were their</p> <p>19 statements of what they saw and observed.</p> <p>20 Some may contradict each other, some may not.</p> <p>21 Q. Did you review the statements to</p> <p>22 see any contradictions, to determine if there</p> <p>23 were any contradictions?</p> <p>24 A. Not specifically to look for</p> <p>25 contradictions, no.</p>

<p style="text-align: right;">Page 338</p> <p>1 Cherry</p> <p>2 Q. If you look at the page 5, the</p> <p>3 middle paragraph it says: Richie went to the</p> <p>4 police station several times from what I</p> <p>5 understand.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Did you do anything to verify</p> <p>9 whether Richie Bossetti went to the police</p> <p>10 stations several times that night?</p> <p>11 MR. NOVIKOFF: Objection.</p> <p>12 A. I didn't. I didn't personally,</p> <p>13 no.</p> <p>14 Q. Do you know whether anyone did?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know where Gary Bossetti</p> <p>17 stayed that night?</p> <p>18 A. According to this statement he</p> <p>19 stayed at Jean's house, or a house that they</p> <p>20 had permission to use.</p> <p>21 Q. Do you know how he got off the</p> <p>22 island?</p> <p>23 A. How he got off the island?</p> <p>24 MR. NOVIKOFF: The question is do</p> <p>25 you know how he got off the island?</p>	<p style="text-align: right;">Page 340</p> <p>1 Cherry</p> <p>2 the conversation contradict her written</p> <p>3 statement?</p> <p>4 A. No.</p> <p>5 Q. She mention anything about a pool</p> <p>6 cue being involved?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did you ask her?</p> <p>9 A. No.</p> <p>10 Q. Was there a pool cue involved?</p> <p>11 A. No.</p> <p>12 Q. Did that seem strange to you --</p> <p>13 MR. NOVIKOFF: He wasn't finished</p> <p>14 with the answer. He was starting to</p> <p>15 answer. So --</p> <p>16 A. I forgot what I was going to say.</p> <p>17 Give me the question again.</p> <p>18 Q. Did she mention anything about a</p> <p>19 pool cue being involved. You said no, and I</p> <p>20 started to say did that seem strange to you,</p> <p>21 and your counsel wanted you to finish what you</p> <p>22 were going to say after no.</p> <p>23 MR. NOVIKOFF: Were you going to</p> <p>24 say anything?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 339</p> <p>1 Cherry</p> <p>2 A. Do I know, no.</p> <p>3 Q. Did you ever make any inquiry as</p> <p>4 to how he got off the island?</p> <p>5 A. I didn't, no.</p> <p>6 Q. So you testified that you called</p> <p>7 her on the 2nd; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. That conversation lasted between</p> <p>10 ten and fifteen minutes?</p> <p>11 A. Approximately.</p> <p>12 Q. Other than what you testified to</p> <p>13 thus far what did she tell you during that</p> <p>14 conversation?</p> <p>15 MR. NOVIKOFF: Objection.</p> <p>16 A. We basically went over the</p> <p>17 statement, a copy of the statement that we</p> <p>18 had, and as I said the end of the conversation</p> <p>19 I asked her to have it notarized and send us</p> <p>20 the original. That was the extent of the</p> <p>21 conversation as far as I recall.</p> <p>22 Q. And did you follow up with her at</p> <p>23 any time after that?</p> <p>24 A. I didn't, no.</p> <p>25 Q. Anything that she told you during</p>	<p style="text-align: right;">Page 341</p> <p>1 Cherry</p> <p>2 Q. Did it seem strange to you that an</p> <p>3 eyewitness to an event wrote a seven-page</p> <p>4 statement, talked to you for fifteen minutes,</p> <p>5 doesn't mention anything about a pool cue</p> <p>6 being involved?</p> <p>7 MR. NOVIKOFF: Objection.</p> <p>8 A. No.</p> <p>9 Q. Why not?</p> <p>10 A. I took her statement as it was</p> <p>11 written. This was the initial part of the</p> <p>12 investigation. You know, there was going to</p> <p>13 be further investigation, not by me, but by</p> <p>14 Sergeant Hesse. So I -- we just were trying</p> <p>15 to get the statements together, who saw what</p> <p>16 she saw, and put those together to see what</p> <p>17 happened. I assumed there would be follow up</p> <p>18 by someone else.</p> <p>19 Q. Why did you assume there would be</p> <p>20 follow up by someone else?</p> <p>21 A. Well, these were the initial</p> <p>22 statements that came in. Now you have to talk</p> <p>23 to the officers or some of the officers</p> <p>24 involved and try to elicit what happened.</p> <p>25 Q. You didn't ask her -- finish.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 87 of 122

<p style="text-align: right;">Page 342</p> <p>1 Cherry</p> <p>2 A. I didn't ask her about the pool 3 cue.</p> <p>4 Q. You didn't think it was --</p> <p>5 A. At that point no --</p> <p>6 MR. NOVIKOFF: Woe. I know you 7 probably know what counsel is going to 8 ask, but let him ask the question.</p> <p>9 Q. You didn't think that it somehow 10 damaged her credibility that she didn't 11 mention anything about a pool cue being 12 involved?</p> <p>13 A. At that point, no.</p> <p>14 Q. At that point you knew that there 15 was a pool cue allegedly involved; is that 16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. Do you know what her relationship 19 with the Bossetti's was at that time?</p> <p>20 A. No.</p> <p>21 Q. Did you ask her?</p> <p>22 A. No.</p> <p>23 Q. Why not?</p> <p>24 MR. NOVIKOFF: Objection. Go 25 ahead.</p>	<p style="text-align: right;">Page 344</p> <p>1 Cherry</p> <p>2 ascertain what biases a potential witness 3 might have?</p> <p>4 MR. NOVIKOFF: Objection. Asked 5 and answered.</p> <p>6 A. No.</p> <p>7 Q. In fact she writes in here that 8 she went to the same house as Gary Bossetti 9 that night; is that correct?</p> <p>10 A. That is correct.</p> <p>11 Q. That she was in touch with Richard 12 Bossetti; is that correct?</p> <p>13 A. Correct.</p> <p>14 Q. And that didn't play a role in 15 your determination of whether her statement 16 was credible?</p> <p>17 MR. NOVIKOFF: Objection. You can 18 answer.</p> <p>19 A. No.</p> <p>20 Q. If you look at page 6, the first 21 paragraph counting up from the bottom six 22 lines up from the bottom?</p> <p>23 A. Okay.</p> <p>24 Q. It says: Before the chief left I 25 told him for 100 percent certainty that there</p>
<p style="text-align: right;">Page 343</p> <p>1 Cherry</p> <p>2 A. At that point in the initial part 3 of the investigation she was a witness to the 4 attack in the bathroom area. I didn't think 5 to ask her what her relationship was with 6 Gary.</p> <p>7 Q. So as part of your investigation 8 you are not looking to see whether alleged 9 eyewitnesses may have a bias?</p> <p>10 A. As I said it was the initial part 11 of the investigation putting together 12 witnesses who were there at the scene. If any 13 questions had to be asked further on that 14 would have been done by a person doing the 15 investigation. I was there to get the 16 original, find out what transpired that night.</p> <p>17 Q. So let me get this straight. You 18 were not doing the investigation?</p> <p>19 A. No.</p> <p>20 Q. You were assisting in the 21 investigation?</p> <p>22 A. I was assisting in the 23 investigation to ascertain what witnesses saw 24 what.</p> <p>25 Q. Right. As part of that you didn't</p>	<p style="text-align: right;">Page 345</p> <p>1 Cherry</p> <p>2 was no gray area about whether or not Gary's 3 actions were justified.</p> <p>4 Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Do you know whether she is 7 qualified to make a judgment as to whether 8 somebody's actions in connection with an 9 assault are justified?</p> <p>10 MR. NOVIKOFF: Objection.</p> <p>11 A. I don't know if she is qualified 12 or not. She saw what she saw.</p> <p>13 Q. Did you ask her why she believed 14 the actions were justified 100 percent?</p> <p>15 A. No, I didn't ask her that.</p> <p>16 Q. And in fact you don't know if she 17 even saw Gary hit somebody with a pool cue; is 18 that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Do you know whether as part of the 21 investigation anybody else spoke to Ms. 22 Myller?</p> <p>23 A. I don't know.</p> <p>24 Q. She indicated in her statement 25 that the chief came to that house; is that</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 88 of 122

<p style="text-align: right;">Page 346</p> <p>1 Cherry 2 correct, in the morning? 3 A. Yes. 4 Q. Did you ever speak to the chief 5 about what she told him? 6 A. No. 7 Q. How come? 8 A. I didn't have the opportunity to. 9 Q. The chief wasn't around that week? 10 A. He wasn't around and as I said I 11 didn't talk to him at all about this 12 investigation. 13 Q. Do you have the chief's phone 14 number? 15 A. I didn't have it at the time, I 16 probably could have gotten it if I wanted to 17 talk to him, but I wasn't conducting the 18 investigation after this initial statement. 19 Q. You also testified that there was 20 a statement in the file from Budd Jaegger; is 21 that correct? 22 A. Correct, or was a memo to the 23 chief. 24 MR. GOODSTADT: Would you mark 25 this as Cherry Exhibit 16, memo dated</p>	<p style="text-align: right;">Page 348</p> <p>1 Cherry 2 the investigation? 3 A. With Chief Hesse? 4 Q. Yes. 5 A. Budd Jaegger was -- Steven Jaegger 6 was the name on the memo, was the husband of 7 Jeannie Jaegger. 8 Q. Did you know what relationship Mr. 9 Hesse had with Budd Jaegger? 10 A. No. 11 Q. If you look down on the first 12 paragraph, five lines up from the -- four 13 lines up from the first paragraph? 14 A. Four lines up from the bottom? 15 Q. Yes, where it says: Ocean Beach 16 Police Officer Gary Bossetti saw the situation 17 and immediately took action. He subdued this 18 drunken individual. 19 Do you see that? 20 A. Yes, I do. 21 Q. Now, again Budd Jaegger doesn't 22 mention anything about a pool cue either; 23 correct? 24 A. No. 25 MR. NOVIKOFF: Objection.</p>
<p style="text-align: right;">Page 347</p> <p>1 Cherry 2 November 1, 2004. 3 (Cherry Exhibit 16, memo dated 4 November 1, 2004, marked for 5 identification, as of this date.) 6 Q. I placed in front of Mr. Cherry 7 what has now been marked as Cherry Exhibit 16, 8 a one-page document Bates number 3180. 9 Mr. Cherry, have you ever seen the 10 document that is marked as Cherry Exhibit 16? 11 A. Yes. 12 Q. And what is this document? 13 A. It is a memo from Steven Jaegger 14 to Edward Paradiso dated November 1, 2004, and 15 the subject was the Halloween party fight. 16 Q. Is this the memorandum that you 17 testified to that was part of the documents 18 that were given to you on November 2nd? 19 A. Yes. 20 Q. Do you know how this document was 21 forwarded to Chief Paradiso and/or anyone in 22 the Ocean Beach Police Department? 23 A. No, I don't. 24 Q. Did you speak with George Hesse 25 about who Budd Jaegger was at any point during</p>	<p style="text-align: right;">Page 349</p> <p>1 Cherry 2 Q. Do you know whether Budd Jaegger 3 actually saw the incident? 4 A. I don't know. 5 Q. Did you ever speak to Budd 6 Jaegger? 7 A. I didn't, no. 8 Q. Do you know whether anyone did as 9 part of the investigation? 10 A. I believe Chief Hesse did, or 11 Sergeant Hesse at the time. 12 Q. What is that belief based on? 13 A. He got the memo from Ed Paradiso, 14 and I believe he spoke to him. I don't know a 15 hundred percent sure whether he spoke to him 16 or not. 17 Q. My question is what is your belief 18 based on that he spoke to him; not the fact 19 that he got a memo, I want to know what your 20 belief that he spoke to him is based on? 21 A. Just a -- there is no basis for 22 the belief, but I assumed he would have spoken 23 to him. 24 Q. Why would you assume that? 25 A. Because he wrote the original</p>
<p style="text-align: right;">Page 346</p> <p>1 Cherry 2 correct, in the morning? 3 A. Yes. 4 Q. Did you ever speak to the chief 5 about what she told him? 6 A. No. 7 Q. How come? 8 A. I didn't have the opportunity to. 9 Q. The chief wasn't around that week? 10 A. He wasn't around and as I said I 11 didn't talk to him at all about this 12 investigation. 13 Q. Do you have the chief's phone 14 number? 15 A. I didn't have it at the time, I 16 probably could have gotten it if I wanted to 17 talk to him, but I wasn't conducting the 18 investigation after this initial statement. 19 Q. You also testified that there was 20 a statement in the file from Budd Jaegger; is 21 that correct? 22 A. Correct, or was a memo to the 23 chief. 24 MR. GOODSTADT: Would you mark 25 this as Cherry Exhibit 16, memo dated</p>	<p style="text-align: right;">Page 348</p> <p>1 Cherry 2 the investigation? 3 A. With Chief Hesse? 4 Q. Yes. 5 A. Budd Jaegger was -- Steven Jaegger 6 was the name on the memo, was the husband of 7 Jeannie Jaegger. 8 Q. Did you know what relationship Mr. 9 Hesse had with Budd Jaegger? 10 A. No. 11 Q. If you look down on the first 12 paragraph, five lines up from the -- four 13 lines up from the first paragraph? 14 A. Four lines up from the bottom? 15 Q. Yes, where it says: Ocean Beach 16 Police Officer Gary Bossetti saw the situation 17 and immediately took action. He subdued this 18 drunken individual. 19 Do you see that? 20 A. Yes, I do. 21 Q. Now, again Budd Jaegger doesn't 22 mention anything about a pool cue either; 23 correct? 24 A. No. 25 MR. NOVIKOFF: Objection.</p>
<p style="text-align: right;">Page 347</p> <p>1 Cherry 2 November 1, 2004. 3 (Cherry Exhibit 16, memo dated 4 November 1, 2004, marked for 5 identification, as of this date.) 6 Q. I placed in front of Mr. Cherry 7 what has now been marked as Cherry Exhibit 16, 8 a one-page document Bates number 3180. 9 Mr. Cherry, have you ever seen the 10 document that is marked as Cherry Exhibit 16? 11 A. Yes. 12 Q. And what is this document? 13 A. It is a memo from Steven Jaegger 14 to Edward Paradiso dated November 1, 2004, and 15 the subject was the Halloween party fight. 16 Q. Is this the memorandum that you 17 testified to that was part of the documents 18 that were given to you on November 2nd? 19 A. Yes. 20 Q. Do you know how this document was 21 forwarded to Chief Paradiso and/or anyone in 22 the Ocean Beach Police Department? 23 A. No, I don't. 24 Q. Did you speak with George Hesse 25 about who Budd Jaegger was at any point during</p>	<p style="text-align: right;">Page 349</p> <p>1 Cherry 2 Q. Do you know whether Budd Jaegger 3 actually saw the incident? 4 A. I don't know. 5 Q. Did you ever speak to Budd 6 Jaegger? 7 A. I didn't, no. 8 Q. Do you know whether anyone did as 9 part of the investigation? 10 A. I believe Chief Hesse did, or 11 Sergeant Hesse at the time. 12 Q. What is that belief based on? 13 A. He got the memo from Ed Paradiso, 14 and I believe he spoke to him. I don't know a 15 hundred percent sure whether he spoke to him 16 or not. 17 Q. My question is what is your belief 18 based on that he spoke to him; not the fact 19 that he got a memo, I want to know what your 20 belief that he spoke to him is based on? 21 A. Just a -- there is no basis for 22 the belief, but I assumed he would have spoken 23 to him. 24 Q. Why would you assume that? 25 A. Because he wrote the original</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 89 of 122

<p>1 Cherry 2 memo. 3 Q. So you assume that because you 4 should speak to somebody who provides a 5 statement? 6 MR. NOVIKOFF: Objection. 7 A. I don't know if it is the Chief 8 Paradiso spoke to him or George spoke to him, 9 I don't know. 10 Q. So maybe Chief Paradiso spoke to 11 him? 12 A. Possibility, yes. 13 Q. Did Chief Paradiso have any role 14 in this investigation? 15 MR. NOVIKOFF: Objection. 16 A. A direct role, I don't know. Not 17 when I was involved in it. 18 Q. Did he have any indirect role 19 while you were involved? 20 A. No. 21 Q. Do you know where Budd Jaeger and 22 Jeannie Jaeger went after the incident that 23 night? 24 MR. NOVIKOFF: Objection. 25 Foundation.</p>	<p>Page 350</p> <p>1 Cherry 2 Q. Do you know whether Budd Jaeger 3 was in the bar when the on duty police 4 officers arrived? 5 A. I don't know whether he was in the 6 bar at all that night. 7 Q. Do you know whether Jeannie 8 Jaeger was at the bar when the on duty police 9 officers arrived? 10 A. I believe she was in the bar, yes. 11 Let me change that. I don't know 12 if she was in the bar, I am not quite sure. I 13 have to review her statement to see if she was 14 in the bar at the time. 15 Q. I don't want to get caught up with 16 inside the bar or outside the bar, was she 17 around the premises? 18 A. I don't know. 19 Q. Do you know whether she gave a 20 statement that night? 21 A. Jeannie Jaeger? 22 Q. Yes. 23 A. Whether she gave a statement; I 24 don't know. 25 Q. To the police that night?</p>
<p>Page 351</p> <p>1 Cherry 2 A. No, I don't know. 3 Q. Do you know whether they went to 4 the police station? 5 A. I don't know. 6 Q. Do you know whether they gave a 7 statement to the officers who were on duty? 8 MR. NOVIKOFF: Objection. 9 A. I don't know. 10 MR. NOVIKOFF: My objection is I 11 don't think you established that Budd 12 Jaeger was even there. It could help 13 you or not. That is the basis of my 14 objection. 15 MR. GOODSTADT: That is fine. If 16 he was not there then you are relying on 17 a witness statement of somebody who was 18 not there. 19 MR. NOVIKOFF: It is what it is. 20 MR. GOODSTADT: Right. 21 Q. So you don't know one way or the 22 other whether Budd Jaeger and Jeannie Jaeger 23 went to the police station that night to 24 provide a statement? 25 A. I don't know.</p>	<p>Page 353</p> <p>1 Cherry 2 A. I don't think she was in the 3 station house that night. 4 Q. Do you know whether she went to 5 CJ's after the incident? 6 A. No, I don't know. 7 Q. And to go from Houser's to CJ's do 8 you have to pass a police station? 9 A. Yes. 10 Q. Do you know whether Budd Jaeger 11 was drinking that night? 12 A. I don't know. 13 Q. Did you ask him? 14 A. No. 15 Q. I think I asked this, but do you 16 know what Budd Jaeger's relationship was with 17 George Hesse? 18 A. No. 19 Q. Sitting here today have you ever 20 spoken with Budd Jaeger about the Halloween 21 incident? 22 A. No. 23 Q. I believe you also testified that 24 you took a statement from Ian Levine; is that 25 correct?</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 90 of 122

<p style="text-align: right;">Page 354</p> <p>1 Cherry 2 A. Yes. 3 Q. When did you take that statement? 4 A. I am not sure of the exact date. 5 MR. GOODSTADT: Would you mark as 6 Cherry Exhibit 17, handwritten document. 7 (Cherry Exhibit 17, handwritten 8 document, marked for identification, as 9 of this date.) 10 Q. I placed in front of Mr. Cherry 11 what is now marked as Cherry Exhibit 17, a 12 two-page document exhibit bearing Bates number 13 3176 to 3177. 14 Mr. Cherry, do you recognize the 15 document that has been marked as Cherry 16 Exhibit 17? 17 A. Yes. 18 Q. What is this document? 19 A. This is a statement of Ian Levine 20 taken November 2nd by me. 21 Q. Is this your handwriting on this 22 document? 23 A. Yes, it is. 24 Q. Look at the 2nd page above where 25 it is handwritten Ian Levine, is that</p>	<p style="text-align: right;">Page 356</p> <p>1 Cherry 2 Q. Do you know whether George called 3 him before and spoke to him before and asked 4 him to come in? 5 A. I don't know. 6 Q. Do you know whether anyone asked 7 him to come in to take a statement? 8 A. I don't know. 9 Q. And this statement is dated 10 November 2nd; is that correct? 11 A. Yes. 12 Q. So is that the date that you 13 actually took a statement on? 14 A. Yes. 15 Q. Was this statement taken, does he 16 give you a narrative or did you ask him 17 questions? 18 A. I asked him what happened and as 19 he told me what happened and I wrote it down. 20 Q. Did you ask him any other 21 questions other than what happened? 22 A. No. 23 Q. Do you know whether Ian Levine was 24 drinking that night? 25 A. No.</p>
<p style="text-align: right;">Page 355</p> <p>1 Cherry 2 Mr. Levine's signature? 3 A. Yes. 4 Q. You witnessed him sign this? 5 A. Yes. 6 Q. You signed under it as Police 7 Officer John Cherry; is that correct? 8 A. Yes. 9 Q. What does the next thing say after 10 your name? 11 A. SH, shield, 426. 12 Q. And why did you take Mr. Levine's 13 statements as opposed to Hesse? 14 A. Chief Hesse asked me to take the 15 statement. 16 Q. So he told you to get the 17 statement of Ian Levine? 18 A. Yes. 19 Q. Did he give you a list of people 20 to take statements from? 21 A. No. 22 Q. When did he ask you to take a 23 statement from Mr. Levine? 24 A. Mr. Levine came into the station, 25 and George asked me to take a statement.</p>	<p style="text-align: right;">Page 357</p> <p>1 Cherry 2 Q. Did you ask him? 3 A. No. 4 Q. Did you think it important to know 5 whether somebody giving a witness statement 6 like Mr. Levine was drinking that night? 7 MR. NOVIKOFF: Objection. 8 A. It may or may not be, but I didn't 9 ask him if he was drinking. 10 Q. When you say may or may not, that 11 is based on the same answer that you gave 12 before? 13 A. Yes. 14 Q. We don't need to go through it 15 again. 16 A. Okay. 17 Q. Who else was there while you were 18 taking the statement from Mr. Levine? 19 A. The chief was there I believe. He 20 was -- he was not in the room -- he didn't 21 witness the statement, so he wasn't actually 22 there when I took the statement. He was 23 somewhere in the station house. 24 Q. Chief Paradiso? 25 A. I'm sorry, Sergeant Hesse.</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 91 of 122

<p style="text-align: right;">Page 358</p> <p>1 Cherry</p> <p>2 Q. So Hesse was a sergeant at the 3 time?</p> <p>4 A. Yes.</p> <p>5 Q. So after Hesse and Paradiso had 6 their private discussion?</p> <p>7 A. Right.</p> <p>8 Q. Paradiso left; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Did he return at all that day 11 while you were there?</p> <p>12 A. No. I believe not, no.</p> <p>13 Q. Did you have any communication 14 with him that day after he left?</p> <p>15 A. No.</p> <p>16 Q. Ian Levine, he is the gentleman 17 who called the police that night; is that 18 correct?</p> <p>19 A. Yes, I believe so.</p> <p>20 Q. Did you know Ian Levine prior to 21 taking the statement?</p> <p>22 A. I knew who he was, he is a local 23 merchant in town.</p> <p>24 Q. Is he a resident of Ocean Beach?</p> <p>25 A. I believe so, yes.</p>	<p style="text-align: right;">Page 360</p> <p>1 Cherry</p> <p>2 Bossetti?</p> <p>3 A. No.</p> <p>4 Q. Do you know what it was with 5 Richard Bossetti?</p> <p>6 A. No.</p> <p>7 Q. Do you know what Budd Jaegger's 8 relationship was with Gary Bossetti?</p> <p>9 A. No.</p> <p>10 Q. Do you know what Budd Jaegger's 11 relationship was with Richard Bossetti?</p> <p>12 A. No.</p> <p>13 Q. How long was Mr. Levine giving you 14 the statement for?</p> <p>15 A. I guesses he was in there maybe 45 16 minutes to an hour maybe, or half hour or 45 17 minutes, somewhere along that line.</p> <p>18 Q. Did you discuss anything else with 19 him other than the statement?</p> <p>20 A. No.</p> <p>21 Q. Did you discuss -- did he tell you 22 anything about Ocean Beach -- strike that. 23 Did he tell you anything to you 24 about the Halloween incident other than what 25 is reflected in your statement?</p>
<p style="text-align: right;">Page 359</p> <p>1 Cherry</p> <p>2 Q. When you say a merchant, does he 3 own a business in Ocean Beach?</p> <p>4 A. I believe him and his father own a 5 business in town.</p> <p>6 Q. What business is that?</p> <p>7 A. They have a landscaping business 8 and they run a hotel I believe.</p> <p>9 Q. What is the name of the 10 landscaping business?</p> <p>11 A. I don't know.</p> <p>12 Q. What was it at the time?</p> <p>13 A. I don't know what it was named at 14 the time.</p> <p>15 Q. What was the name of the hotel 16 that they ran at the time?</p> <p>17 A. I believe it is Season's Hotel.</p> <p>18 Q. Is it still open, Season's?</p> <p>19 A. Yes.</p> <p>20 Q. Do they still run it?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what Mr. Levine's 23 relationship was with Mr. Hesse?</p> <p>24 A. No.</p> <p>25 Q. Do you know what it was with Gary</p>	<p style="text-align: right;">Page 361</p> <p>1 Cherry</p> <p>2 A. No.</p> <p>3 Q. It took you 45 minutes to do a 4 page and a half statement?</p> <p>5 MR. NOVIKOFF: Objection.</p> <p>6 A. Half hour to 45 minutes talking to 7 him, what happened, writing it down. Then 8 what happened, write it down. Continue on the 9 narrative. As he told me what happened I 10 wrote it down.</p> <p>11 Q. And other than for asking what 12 happened a number of times were there any 13 other questions that you asked him about the 14 Halloween incident?</p> <p>15 MR. NOVIKOFF: Objection.</p> <p>16 A. No.</p> <p>17 Q. I will note again and I will 18 represent for the record that Mr. Levine 19 doesn't mention anything about a pool cue in 20 here; is that correct?</p> <p>21 A. I didn't read the statement --</p> <p>22 MR. NOVIKOFF: The document speaks 23 for itself. You can answer the question.</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall him mentioning</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 92 of 122

<p style="text-align: right;">Page 362</p> <p>1 Cherry 2 anything about a pool cue to you? 3 A. No. 4 Q. Do you recall whether he told you 5 that he actually saw the incident, the fight 6 being the incident? 7 A. Again I would have to read what he 8 said in the statement. He said he noticed 9 some people fighting in the back and 10 recognized Gary Bossetti. As I said this is 11 his statement, it speaks to what he told me. 12 Q. The fight was in the northeast 13 corner of the bar, do you see that, it is on 14 the sixth line down? 15 A. The second paragraph. 16 Q. Of the second paragraph, yes? 17 A. I see that. 18 Q. He says he was sitting at the bar, 19 do you see that? 20 A. Yes. 21 Q. How far is the bar to the 22 northeast corner of Houser's? 23 A. I don't know. 24 Q. Have you ever been in Houser's? 25 A. Just one time.</p>	<p style="text-align: right;">Page 364</p> <p>1 Cherry 2 about it. Tell me what you saw and tell me 3 what happened. 4 Q. Did Mr. Levine give a statement to 5 the police that night? 6 A. I don't know. 7 Q. Do you know whether he was at the 8 bar when the on duty police officers showed 9 up? 10 A. I don't know if he mentioned it in 11 the statement or not. 12 MR. NOVIKOFF: Does he personally 13 know -- 14 Q. Whether you know by something that 15 you were told by Mr. Levine or somebody -- 16 fair enough. 17 A. What was the question again? 18 Q. Whether you know whether Mr. 19 Levine was at the bar or on the bar's premise 20 at the time when the on duty police officers 21 showed up? 22 A. Do I know personally, no. But he 23 says he was in the statement. 24 Q. Did you ask him why he didn't give 25 a statement at that point in time?</p>
<p style="text-align: right;">Page 363</p> <p>1 Cherry 2 Q. When was that? 3 A. On November 2nd. 4 Q. As part of the investigation? 5 A. Yes. 6 Q. You didn't check -- strike that. 7 Was that before or after you took 8 the statement from Mr. Levine? 9 A. Before. 10 Q. So you didn't -- strike that. 11 Based on your visit there was it 12 your position that somebody could see the 13 northeast corner of the bar when they are 14 sitting at the bar? 15 MR. NOVIKOFF: Objection. 16 A. I don't know. 17 Q. Did you ask him about whether he 18 saw a pool cue being used that night? 19 A. No. 20 Q. Did you think it was strange that 21 he didn't mention anything about a pool cue? 22 MR. NOVIKOFF: Objection. 23 A. It is his statement, I am not 24 going to put words in the man's mouth. If he 25 didn't mention it I was not going to ask him</p>	<p style="text-align: right;">Page 365</p> <p>1 Cherry 2 A. No. 3 Q. Did you think it was strange that 4 he didn't give a statement to the on duty 5 officers when they showed up? 6 MR. NOVIKOFF: Objection. 7 A. If I was one of the officers 8 responding and he was a person originally 9 called I would have sought him out to find out 10 what happened. I don't know what transpired 11 at the bar that night, I wasn't there. So I 12 don't know why he didn't give a statement to 13 the officers who responded. 14 Q. So you don't know one way or the 15 other whether the officers who responded tried 16 to get a statement from Mr. Levine? 17 A. I don't know. 18 Q. Do you know what Mr. Levine's 19 relationship was with Elyse Myller? 20 A. No. 21 Q. But he mentions that he spoke to 22 Elyse Myller and got the information about 23 what happened to Jeannie Jaeger from her; is 24 that correct? 25 MR. NOVIKOFF: Objection. The</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 93 of 122

1 Cherry 2 document speaks for itself. You can 3 answer. 4 A. I didn't read that part. Can you 5 tell me what page. 6 Q. Second page, and it is the second 7 paragraph down: I later spoke to Elyse Myller 8 who told me that Jeannie Jaegger was attacked 9 by the man who Gary was trying to take out of 10 the bar. 11 A. Okay. Yes. 12 Q. Did you ask him what his 13 relationship was with Elyse Myller? 14 A. No. 15 Q. Did you ask him why he didn't go 16 to the police station that night? 17 A. No. 18 Q. Did you credit his statement as 19 part of your investigation? 20 MR. NOVIKOFF: Objection. 21 A. Yes. 22 Q. Do you know whether he saw Elyse 23 Myller's statement prior to giving you his 24 statement? 25 A. Not to my knowledge.	Page 366	Page 368
1 Cherry 2 Q. So you don't know one way or the 3 other? 4 A. No. 5 MR. GOODSTADT: I think we can 6 break now. 7 MR. NOVIKOFF: Great. 8 MR. GOODSTADT: The deposition is 9 not closed subject to the time remaining, 10 and we will find a convenient date to 11 bring Mr. Cherry back to complete the 12 deposition. 13 THE VIDEOGRAPHER: The time is 14 5:13. We are going off the record. 15 (Time noted: 5:13 a.m.) 17 <hr/> 18 PATRICK JOHN CHERRY 19 Subscribed and sworn to before me 20 this ____ day of _____, 2008 22 <hr/> 23 24 25	Page 367	Page 369

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 94 of 122

Page 370

1 Cherry Exhibit 9, report, 287
2 Cherry Exhibit 10, report, 293
3 Cherry Exhibit 11, report, 294
4 Cherry Exhibit 12, incident 296
5 report,
6 Cherry Exhibit 13, photocopy of 298
7 a photograph,
8 Cherry Exhibit 14, handwritten 313
9 note,
10 Cherry Exhibit 15, handwritten 315
11 document,
12 Cherry Exhibit 16, memo dated 347
13 November 1, 2004,
14 Cherry Exhibit 17, handwritten 354
15 document,
16
17
18
19
20
21
22
23
24
25

Page 371

1 *** ERRATA SHEET ***
2 NAME OF CASE: CARTER VS. OCEAN BEACH
3 DATE OF DEPOSITION: November 18, 2008
4 NAME OF WITNESS: PATRICK JOHN CHERRY
5 PAGE LINE FROM TO
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____

21 PATRICK JOHN CHERRY

22 Subscribed and sworn to before me
23 this ____ day of _____, 2008.

24
25 (Notary Public) My Commission Expires:

94 (Pages 370 to 371)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 95 of 122

Page 372

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EDWARD CARTER, FRANK FIORILLO,)
KEVIN LAMM, JOSEPH NOFI, and)
THOMAS SNYDER,)
)
Plaintiffs,)
)
vs.) CV 07 1215
)
INCORPORATED VILLAGE OF OCEAN)
BEACH; MAYOR JOSEPH C. LOEFFLER)
JR., individually and in his)
Official capacity; former mayor)
NATALIE K. ROGERS, individually)
and in her official capacity,)
OCEAN BEACH POLICE DEPARTMENT;)
ACTING DEPUTY POLICE CHIEF)
GEORGE B. HESSE, individually)
and in his official capacity;)
SUFFOLK COUNTY; SUFFOLK COUNTY)
POLICE DEPARTMENT, SUFFOLK)
COUNTY DEPARTMENT OF CIVIL)
SERVICE; and ALLISON SANCHEZ,)
Individually and in her)
Official capacity,
)
Defendants.
-----)

CONTINUED VIDEOTAPED DEPOSITION OF

PATRICK CHERRY

New York, New York

Friday, February 6, 2009

Reported by:
Philip Rizzuti
JOB NO. 20816B

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 96 of 122

1 2 3 4 February 6, 2009 5 11:32 a.m. 6 7 Continued videotaped deposition of 8 PATRICK CHERRY, held at the offices 9 of Thompson Wigdor & Gilly, 85 Fifth 10 Avenue, New York, New York, pursuant to 11 subpoena, before Philip Rizzuti, a 12 Notary Public of the State of New York 13 14 15 16 17 18 19 20 21 22 23 24 25	Page 373	1 2 APPEARANCES: 3 4 BEE READY FISHBEIN HATTER & DONOVAN, LLP 5 Attorneys for Village of Ocean Beach 6 170 Old Country Road 7 Mineola, New York 11501 8 BY: KENNETH A. GRAY, ESQ. 9 10 ALSO PRESENT: 11 MICHAEL PINEIRO, Videographer 12 KEVIN LAMM 13 FRANK FIORILLO 14 15 16 17 18 19 20 21 22 23 24 25	Page 375
1 2 APPEARANCES: 3 4 THOMPSON WIGDOR & GILLY, LLP 5 Attorneys for Plaintiffs 6 85 Fifth Avenue 7 New York, New York 10003 8 BY: ANDREW S. GOODSTADT, ESQ. 9 10 11 MARKS, O'NEILL, O'BRIEN & COURTNEY, P.C. 12 Attorneys for George B. Hesse 13 530 Saw Mill Road 14 Elmsford, New York 10523 15 BY: KEVIN W. CONNOLLY, ESQ. 16 17 RIVKIN RADLER, LLP 18 Attorneys for Incorporated Village of 19 Ocean Beach, Joseph Loeffler, Natalie 20 Rogers and Ocean Beach Police Department 21 926 RexCorp Plaza 22 Uniondale, New York 11556-0926 23 BY: MICHAEL P. WELCH, ESQ. 24 25	Page 374	1 2 IT IS HEREBY STIPULATED AND AGREED, 3 by and between counsel for the respective 4 parties hereto, that the filing, sealing and 5 certification of the within deposition shall 6 be and the same are hereby waived; 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to the form 9 of the question, shall be reserved to the 10 time of the trial; 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be signed 13 before any Notary Public with the same force 14 and effect as if signed and sworn to before 15 the Court. 16 17 18 19 20 21 22 23 24 25	Page 376

2 (Pages 373 to 376)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 97 of 122

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 98 of 122

<p style="text-align: center;">Page 381</p> <p>1 Cherry 2 A. Yes. 3 Q. Did he say anything in response? 4 A. No, sir. 5 Q. Did you discuss any of the 11:35:46 6 plaintiffs in this case with him? 7 A. No, sir. 8 Q. Since November 18, 2008 until 9 today have you discussed anything at all about 10 the plaintiffs in this case with the George 11:35:57 11 Hesse? 12 A. No. 13 Q. Have you discussed anything at all 14 about this lawsuit with George Hesse between 15 November 18, 2008 and today? 11:36:04 16 A. Other than coming today, I had to 17 go back, there was no other discussions. 18 Q. Did you speak to him about your 19 first day of deposition at all? 20 A. Other than I went to the 11:36:14 21 deposition, that is about it. 22 Q. You didn't tell him how it went or 23 what any of the questions were? 24 A. No, sir. 25 Q. Nothing about the substance of the 11:36:20 </p>	<p style="text-align: center;">Page 383</p> <p>1 Cherry 2 Q. Why did you tell -- strike that. 3 What position does she have at 4 Ocean Beach? 5 A. She works for Klein's, it is a 11:37:22 6 general store over in Ocean Beach. 7 Q. So she is not employed by Ocean 8 Beach, she is employed by a private business 9 at Ocean Beach? 10 A. That is correct. 11:37:31 11 Q. How long has she had that job? 12 A. I guess since -- I would say over 13 ten years. 14 Q. And why did you tell Mr. Hesse 15 that you were coming here today? 11:37:44 16 A. He was. 17 MR. WELCH: Objection. You can 18 answer. 19 A. I was -- I called him to sign on 20 duty. He answered the phone. 11:37:53 21 Q. Do you report to him? 22 A. I don't understand in what way, 23 sir. 24 Q. Is he your supervisor? 25 A. Well, I do report to him, he is a 11:38:04 </p>
<p style="text-align: center;">Page 382</p> <p>1 Cherry 2 deposition? 3 A. No, sir. 4 Q. I believe the last time you 5 testified that you have two daughters; is that 11:36:25 6 correct? 7 A. That is correct. 8 Q. One's name is Deirdre? 9 A. Correct. 10 Q. The other one? 11:36:31 11 A. Nora. 12 Q. Is Deirdre friends with Mr. Hesse? 13 A. She knows Mr. Hesse, but other 14 than say hello, I don't think I would consider 15 them friends. They know each other. 11:36:50 16 Q. What do you mean by saying hello, 17 have they seen each other over the last two 18 years? 19 A. My daughter works over at Ocean 20 Beach and she will stop into the station to 11:37:03 21 tell me she is there, and if George is there 22 she will say hello to him, or if he stops by 23 the house she will say hello to him. But 24 other than that there is no other 25 relationship. 11:37:16 </p>	<p style="text-align: center;">Page 384</p> <p>1 Cherry 2 supervisor. But today whoever answered the 3 phone I would have signed on duty with. He 4 just happened to answer the question. 5 Q. Is he still actively working at 11:38:17 6 Ocean Beach? 7 A. I believe so, yes. 8 Q. Do you know what his position is? 9 A. He is a supervisor. I don't know 10 exactly what his current position is, or his 11:38:24 11 current title is I should say. 12 Q. You don't know what his current 13 title is? 14 A. No. 15 Q. What do you refer to him as 11:38:30 16 currently? 17 A. Chief. I still call him chief. 18 Q. You still call him chief? 19 A. Yes, sir. 20 Q. Do other people in the department 11:38:35 21 call him chief? 22 A. I wouldn't know. 23 Q. I believe the last time you 24 testified that you were an on call dispatcher 25 currently; is that correct? 11:38:43 </p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 99 of 122

<p style="text-align: right;">Page 385</p> <p>1 Cherry 2 A. That is correct. 3 Q. Is that an actual civil service 4 title? 5 MR. WELCH: Objection. Asked and 11:38:46 6 answered in the previous definition. You 7 can answer again. 8 A. I believe so, yes. 9 Q. Did you have to take a test for 10 that title? 11:38:52 11 A. No. 12 Q. Did you have to apply to receive 13 that position? 14 MR. WELCH: Objection. Asked and 15 answered. You can answer. 11:38:58 16 A. I applied for a job as dispatcher 17 with the village and was hired. There was no 18 -- I filled out -- I don't know if I filled 19 out another application or not. But yes, I 20 resigned as a police officer and applied as a 11:39:10 21 dispatcher when they asked me to. 22 Q. But no further applications or 23 paperwork with respect to becoming an on call 24 dispatcher? 25 A. No, sir. 11:39:20</p>	<p style="text-align: right;">Page 387</p> <p>1 Cherry 2 this document as Cherry Exhibit 18, 3 document numbered 003165 through 3166. 4 (Cherry Exhibit 18, document 5 numbered 003165 through 3166, marked for 11:40:23 6 identification, as of this date.) 7 Q. I place in front of Mr. Cherry 8 what has been marked as Cherry Exhibit 18, two 9 page exhibit bearing Bates numbers 3165 to 10 3166. 11:40:57 11 Have you ever seen the document 12 marked as Cherry Exhibit 18? 13 A. I have seen this document, yes. 14 Q. What it the document? 15 A. It is a statement of Douglas 11:41:02 16 Wycoff. 17 Q. Who took this statement? 18 MR. WELCH: Objection. 19 A. George Hesse did. 20 Q. Were you present in the station on 11:41:12 21 November 2, 2004? 22 A. I am not sure. 23 Q. Were you present at this 24 investigation -- strike that. 25 Were you present at the site in 11:41:26</p>
<p style="text-align: right;">Page 386</p> <p>1 Cherry 2 Q. Now, the last time we finished off 3 we were in the middle of discussing your role 4 in the investigation into the Halloween 5 incident, do you recall that, sir? 11:39:30 6 A. Yes, I do. 7 Q. Do you know who Mr. Douglas Wycoff 8 it? 9 A. Yes. 10 Q. Who is Douglas Wycoff? 11:39:36 11 A. He is a resident of Ocean Beach. 12 I believe he is a teacher over there at the 13 school, and I know him from the village. 14 Q. Are you friends with him? 15 A. I wouldn't say friends. I know 11:39:51 16 him to say hello. 17 Q. Does he live on the beach; is he a 18 permanent resident of the beach? 19 A. I believe so, yes. 20 Q. Do you know where, what address he 11:40:05 21 lives at? 22 A. No. 23 Q. Have you ever been to his house? 24 A. No. 25 MR. GOODSTADT: Would you mark 11:40:12</p>	<p style="text-align: right;">Page 388</p> <p>1 Cherry 2 which Mr. Hesse took Mr. Wycoff's statement? 3 MR.. WELCH: Objection. 4 A. I don't believe so, no. 5 Q. Have you ever spoken with Douglas 11:41:37 6 Wycoff about the incident on Halloween 2004 in 7 Ocean Beach? 8 A. No. 9 Q. Did you ever speak with anyone 10 about the statement that has been marked as 11:41:50 11 Cherry Exhibit 18? 12 A. Could you repeat that? 13 Q. Have you ever spoken to anybody 14 about the statement that has been marked as 15 Cherry Exhibit 18? 11:42:00 16 A. No. 17 Q. When was the first time that you 18 reviewed this document? 19 A. I don't know the first time, I 20 don't remember the first time that I looked at 11:42:08 21 it. 22 Q. Did you review it in your role as 23 part of the investigation into the Halloween 24 incident? 25 A. Sometime after that, after the -- 11:42:14</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 100 of 122

<p style="text-align: right;">Page 389</p> <p>1 Cherry 2 it was not -- it was probably when I got 3 back -- I don't know the exact time. I did 4 read it sometime afterwards.</p> <p>5 Q. How long afterwards? 11:42:26 6 A. Probably when I got back for the 7 next season.</p> <p>8 Q. So you don't think you reviewed 9 the statement until the '05 season?</p> <p>10 A. That is correct. 11:42:34 11 Q. Do you know whether this statement 12 played any role in any conclusions that were 13 reached as part of that investigation?</p> <p>14 MR. WELCH: Objection. You can 15 answer. 11:42:47 16 A. I don't know. 17 Q. Did you ever speak to George Hesse 18 about this statement? 19 A. No. 20 Q. How did you come about getting a 11:42:52 21 copy of this? 22 A. There was a file. 23 Q. What do you mean there was a file? 24 A. There was a case file on this 25 incident. A file where they kept all the 11:43:02</p>	<p style="text-align: right;">Page 391</p> <p>1 Cherry 2 A. No. 3 Q. Do you know whether the 4 investigation was concluded as of the 5 beginning of the '05 season? 11:43:53 6 A. The investigation was concluded, 7 yes.</p> <p>8 Q. Do you know if any conclusions 9 were reached? 10 A. As far as -- 11:44:00 11 Q. Well, were there any conclusions 12 reached as a result of the investigation? 13 A. Yes. 14 Q. What were the conclusions that 15 were reached? 11:44:09 16 A. That Gary Bossetti apparently had 17 acted as his role as a police officer. Gary 18 Bossetti had acted properly as his role as a 19 police officer. Observed a female getting 20 attacked by someone, went in and intervened 11:44:32 21 and stopped the attack, and then was 22 assaulted by the -- I believe Mr. Van Koot and 23 two friends of his, and that he acted in 24 defending himself properly.</p> <p>25 Q. Who reached that conclusion? 11:44:54</p>
<p style="text-align: right;">Page 390</p> <p>1 Cherry 2 paperwork.</p> <p>3 Q. How did you receive a copy of the 4 file when you came back in the '05 season? 5 A. I didn't receive a copy of it, I 11:43:11 6 looked at the file.</p> <p>7 Q. Where was the file kept? 8 A. In the office.</p> <p>9 Q. Whose office? 10 A. The village, the Police Department 11:43:19 11 office.</p> <p>12 Q. So nobody handed it to you, you</p> <p>13 just went into the file cabinet and looked at</p> <p>14 the file?</p> <p>15 A. No. I asked to read the -- look 11:43:29 16 at the file.</p> <p>17 Q. Who did you ask? 18 A. Sergeant Hesse.</p> <p>19 Q. And he was the sergeant at the</p> <p>20 time? 11:43:38</p> <p>21 A. Yes.</p> <p>22 Q. Did you have any reaction when you</p> <p>23 read this statement from Douglas Wycoff?</p> <p>24 MR. WELCH: Objection. You can 25 answer. 11:43:47</p>	<p style="text-align: right;">Page 392</p> <p>1 Cherry 2 A. That was the conclusion that 3 apparently -- I reached that conclusion myself 4 on the investigation, and George and I believe 5 Chief Paradiso reached that conclusion also. 11:45:04</p> <p>6 Q. When did you reach that 7 conclusion? 8 A. After the investigation was 9 finished.</p> <p>10 Q. When was that? 11:45:09 11 A. Not finished, but after we took 12 the statements from the witnesses.</p> <p>13 Q. When was that? 14 A. Well, after I completed my 15 statements it sort of put the picture together 11:45:22 16 and I guess -- I don't know exactly when the 17 chief and the sergeant drew the same 18 conclusion, it was sometime shortly 19 thereafter.</p> <p>20 Q. When did you reach the conclusion 11:45:33 21 of your role in the investigation? 22 A. After I finished taking the 23 statements and read them that was my opinion.</p> <p>24 Q. When was that? 25 A. Shortly after I took the 11:45:40</p>

6 (Pages 389 to 392)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 101 of 122

<p style="text-align: right;">Page 393</p> <p>1 Cherry 2 statements sometime in the beginning of 3 November. 4 Q. So you reached the conclusion 5 before you saw Mr. Wycoff's statement; is that 11:45:47 6 correct? 7 A. Probably yes. 8 Q. Had you spoken to either Gary or 9 Richard Bossetti about the incident at the 10 time that you reached your conclusion? 11:45:56 11 A. No. 12 Q. Had you spoken to Mr. Van Koot 13 prior to reaching the conclusion? 14 MR. WELCH: Objection. 15 A. No. 11:46:03 16 Q. Had you spoken to Mr. Shallek 17 prior to reaching the conclusion that 18 Mr. Bossetti, Gary Bossetti had acted properly 19 in his role as police officer? 20 A. No. 11:46:18 21 MR. WELCH: Objection. 22 Q. What was the basis of your 23 conclusion? 24 A. The sum and substance of the 25 statements that we took. 11:46:25</p>	<p style="text-align: right;">Page 395</p> <p>1 Cherry 2 A. I don't know. 3 Q. What was Mr. Hesse's response? 4 A. He agreed. 5 Q. At that time he agreed? 11:47:27 6 A. Yes. 7 Q. So this is somewhere in the very 8 beginning of November? 9 A. Well, yes. By the first 10 probably -- I don't know the date of the last 11:47:35 11 statement I took, but it was sometime probably 12 in the first week of November. 13 Q. Had you -- 14 A. To the best of my recollection. 15 Q. And when you reached that 11:47:44 16 conclusion had you spoken with Mr. Fiorello? 17 A. No. 18 MR. WELCH: Objection. 19 Q. And at the time that you reached 20 that conclusion had you spoken with Mr. Lamm 11:47:53 21 about the incident? 22 MR. WELCH: Objection. 23 A. No. 24 Q. At the time that you reached the 25 conclusion had you spoken with Mr. Snyder 11:47:59</p>
<p style="text-align: right;">Page 394</p> <p>1 Cherry 2 Q. And again those statements did not 3 include either of the Bossetti's or any of the 4 other three individuals who were part of the 5 incident; is that correct? 11:46:35 6 MR. WELCH: Objection. You can 7 answer. 8 A. Correct. 9 Q. Did you report your conclusion to 10 anybody? 11:46:48 11 A. I told George what my feelings 12 were. 13 Q. When did you tell George that? 14 A. After we finished taking the 15 initial statements that I took. 11:46:57 16 Q. What exactly did you tell George? 17 A. That it appeared that Gary acted 18 properly. That he came to the defense of a 19 third person and then continued to defend 20 himself. 11:47:10 21 Q. Did you put your conclusion in 22 writing in any way? 23 A. No. 24 Q. Do you know whether Mr. Hesse took 25 any notes of your conclusion? 11:47:20</p>	<p style="text-align: right;">Page 396</p> <p>1 Cherry 2 about the incident? 3 MR. WELCH: Objection. 4 A. No. 5 Q. Do you think it would have been 11:48:03 6 important to speak to the three of them prior 7 to reaching the conclusion? 8 MR. WELCH: Objection. 9 A. Well, it was not my -- I didn't 10 feel that I was the person to speak to them. 11:48:15 11 Q. Why? 12 A. I believe that was either the 13 sergeant or the chief's job to interview them. 14 Q. Did anyone tell you that they were 15 going to interview them? 11:48:28 16 A. No. 17 Q. Do you know whether either of the 18 three of them were interviewed prior to 19 reaching your conclusion that Mr. Hesse 20 concurring with your conclusion? 11:48:35 21 A. No. 22 Q. You don't know one way or the 23 other? 24 A. No. 25 Q. Do you know whether any of the 11:48:44</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 102 of 122

<p style="text-align: right;">Page 397</p> <p>1 Cherry 2 three -- well, actually more than three 3 civilians in the fight. Whether Mr. Van Koot, 4 Mr. Shallek or Mr. Tesoro were interviewed by 5 Mr. Hesse or Mr. Paradiso prior to reaching 11:48:55 6 your conclusion? 7 A. No. 8 Q. Do you know whether they ever 9 interviewed any of the three of them? 10 A. I don't know. 11:49:04 11 Q. Did you ever interview any of the 12 three of them? 13 A. No. 14 MR. WELCH: Objection. 15 Q. Do you think it would have been 11:49:08 16 important to interview the three of them 17 before reaching a conclusion as to what 18 happened? 19 MR. WELCH: Objection. Asked and 20 answered. You can answer again. 11:49:21 21 A. They had given their statements 22 already to these officers, and I felt based on 23 what the other witnesses said that Bossetti, 24 Gary Bossetti acted within his duties as a 25 police officer. I didn't feel myself it was 11:49:41</p>	<p style="text-align: right;">Page 399</p> <p>1 Cherry 2 everybody who was there? 3 MR. WELCH: Objection. You can 4 answer. 5 A. Yes. 11:50:43 6 Q. Did you believe Mr. Wycoff's 7 statement to be accurate and credible when you 8 read it in the beginning of the season of '05? 9 A. Yes. 10 Q. I note in here that he did not 11:51:04 11 mention anything about a pool cue again. Do 12 you think that that was strange that he didn't 13 mention anything about the pool cue being 14 used? 15 MR. WELCH: Objection. Did you 11:51:14 16 review the document and know what it 17 says? 18 A. I have not read it recently, but I 19 did read it. Give me a moment and I will read 20 it again. 11:51:22 21 MR. WELCH: Do you want him to 22 read it again? 23 Q. I will represent that there is 24 nothing in there about a pool cue? 25 MR. WELCH: Based on that 11:51:29</p>
<p style="text-align: right;">Page 398</p> <p>1 Cherry 2 necessary to speak to them. 3 Q. Had you reviewed their statements 4 prior to reaching the conclusion? 5 A. I read the statements. 11:49:48 6 Q. Did you believe them to be 7 credible? 8 A. I think they left out part of 9 their -- you know, what happened prior to them 10 getting involved in the fight. So I don't 11:50:02 11 know -- we didn't know how the fight or 12 alleged fight actually started, and I think 13 that was important to find out what caused the 14 fight and who started it and what happened. 15 That is what we were looking into, how did 11:50:18 16 this whole thing start. 17 Q. Right. So you thought it was 18 important to learn that from them, but you 19 never asked them, correct? 20 A. I thought it was important to find 11:50:28 21 out what happened, what actually happened by 22 interviewing other witnesses. It appeared to 23 me that it was only half the story there. 24 Q. Did you think it was important to 25 find out what happened before the fight from 11:50:38</p>	<p style="text-align: right;">Page 400</p> <p>1 Cherry 2 representation -- what was the question? 3 Q. Do you think it is strange that he 4 didn't mention that a pool cue was used as 5 part of the fight? 11:51:37 6 MR. WELCH: Objection. You can 7 answer. 8 A. I don't know what he saw and what 9 he didn't see. This is his statement. 10 Q. And did you ever read the 11:51:44 11 statements that were given by the three on 12 duty police officers that night? 13 MR. WELCH: Objection. You can 14 answer. 15 A. I eventually read them, yes. 11:51:54 16 Q. And when did you read those? 17 A. Again in the early part of the '05 18 season. 19 Q. So you didn't read them as part of 20 your -- in reaching your conclusion as to what 11:52:08 21 happened that night? 22 A. No. 23 Q. So what did you actually -- other 24 than the statements that you took what did you 25 review in reaching your conclusion? 11:52:20</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 103 of 122

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 104 of 122

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 105 of 122

<p style="text-align: right;">Page 409</p> <p>1 Cherry</p> <p>2 Q. Had you spoken to Mr. O'Rourke</p> <p>3 prior to taking a statement about the</p> <p>4 Halloween incident?</p> <p>5 A. No. 11:59:48</p> <p>6 Q. Did you ask him any specific</p> <p>7 questions for the statement or he just gave</p> <p>8 you a narrative?</p> <p>9 A. I asked him what happened, he gave</p> <p>10 me a narrative, which is basically this. 11:59:55</p> <p>11 Q. So you didn't ask any other</p> <p>12 questions other than for what happened?</p> <p>13 A. The only question I asked him, he</p> <p>14 was telling me about the incident. He said</p> <p>15 one of the Bossetti's, he said I don't know 12:00:08</p> <p>16 his first name, I don't know whether it is</p> <p>17 Richie or Gary. I said well can you tell the</p> <p>18 difference between them, and he said yes. I</p> <p>19 said what do you know him, who do you think,</p> <p>20 what name do you think -- who do you think it 12:00:22</p> <p>21 was, Richie or Gary as far as the name goes;</p> <p>22 and he said I think it was Richie.</p> <p>23 I said -- then I said you sure you</p> <p>24 can identify, tell them apart. He said yes.</p> <p>25 I said okay, if you think his name is Richie, 12:00:41</p>	<p style="text-align: right;">Page 411</p> <p>1 Cherry</p> <p>2 was involved he wasn't sure of. He wasn't</p> <p>3 sure it was Richie or Gary. He knew which</p> <p>4 Bossetti was involved in it by facial</p> <p>5 recognition, but he wasn't sure of what 12:01:33</p> <p>6 brother that was.</p> <p>7 Q. How do you know that he knew which</p> <p>8 Bossetti was involved; did you put pictures in</p> <p>9 front of him?</p> <p>10 A. No. I asked him if he knew the 12:01:43</p> <p>11 difference between which two brothers. They</p> <p>12 are facially -- they are not identical</p> <p>13 twins -- they are not -- they are not</p> <p>14 identical. You can tell them apart, they</p> <p>15 don't look the same. 12:02:00</p> <p>16 Q. No, I understand that. But when</p> <p>17 he told you it was Rich Bossetti how did you</p> <p>18 know that he actually saw Gary Bossetti, was</p> <p>19 just getting his name wrong?</p> <p>20 A. Well, I said there was a problem 12:02:11</p> <p>21 with this, could you identify him from a photo</p> <p>22 pack or in person, he said yes.</p> <p>23 Q. Did he identify him?</p> <p>24 A. No. I said if need be we would</p> <p>25 show you a picture. 12:02:23</p>
<p style="text-align: right;">Page 410</p> <p>1 Cherry</p> <p>2 we will use Richie. That is why his name is</p> <p>3 Richie here, not Gary.</p> <p>4 Q. So he mis-identified who was in</p> <p>5 the fight; right? 12:00:44</p> <p>6 A. No.</p> <p>7 MR. WELCH: Objection.</p> <p>8 A. He wasn't sure what the first name</p> <p>9 of the Bossetti that was involved in the fight</p> <p>10 was. 12:00:53</p> <p>11 Q. But he knew the difference between</p> <p>12 the two; correct?</p> <p>13 A. Yes. He knew the difference</p> <p>14 facially, but he was not sure who was who, you</p> <p>15 follow me? 12:01:00</p> <p>16 Q. I don't follow.</p> <p>17 A. I had the same problem with the</p> <p>18 Bossetti brothers --</p> <p>19 MR. WELCH: There is no question</p> <p>20 pending. 12:01:08</p> <p>21 Q. What did he tell you his problem</p> <p>22 was with identifying the Bossetti's?</p> <p>23 MR. WELCH: Objection.</p> <p>24 A. Which -- it was not which</p> <p>25 Bossetti, it was the name of the Bossetti that 12:01:22</p>	<p style="text-align: right;">Page 412</p> <p>1 Cherry</p> <p>2 Q. How come none of that is recorded</p> <p>3 in your statement?</p> <p>4 MR. WELCH: Objection.</p> <p>5 A. I just didn't put it in. 12:02:29</p> <p>6 Q. How come?</p> <p>7 A. I didn't think it was necessary.</p> <p>8 I am explaining it now. If it had to be</p> <p>9 explained, I would explain it. As a matter of</p> <p>10 fact I told Sergeant Hesse that he had a 12:02:44</p> <p>11 problem with -- not with -- which, the name of</p> <p>12 the Bossetti that was involved. He knew which</p> <p>13 Bossetti it was, he was not sure whether the</p> <p>14 name was Gary or Richie. I explained that to</p> <p>15 the sergeant if in fact we needed to get 12:02:59</p> <p>16 identification he could pick out the Bossetti</p> <p>17 that was involved either from a photo pack or</p> <p>18 in person.</p> <p>19 Q. How long has Sean O'Rourke worked</p> <p>20 in Ocean Beach? 12:03:12</p> <p>21 A. I don't know. He lives there. I</p> <p>22 don't know how long he has worked there.</p> <p>23 Q. How many years have the Bossetti's</p> <p>24 been working there?</p> <p>25 A. At that time I guess about two 12:03:19</p>

11 (Pages 409 to 412)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 106 of 122

	Page 413		Page 415
1	Cherry	1	Cherry
2	years or so. Two or three. I am not sure of	2	Q. Which officer did he try to tell?
3	the number.	3	A. He didn't say. He said one of the
4	Q. How come you didn't show him a	4	officers.
5	picture at the time to make sure that his	5	Q. Did you ask him which officer? 12:05:12
6	statement was accurate?	6	A. No.
7	MR. WELCH: Objection.	7	Q. How come?
8	A. We didn't have a photo pack	8	A. I didn't think it was important at
9	prepared, and rather than just show him one	9	the time I was taking the statement.
10	picture or two pictures of the brothers I	10	Q. Now looking through this could you 12:05:22
11	decided to wait, and if we needed	11	point to me where in the statement it said
12	identification we could do it the proper way.	12	that Sean O'Rourke called the police?
13	Q. Were there any pictures of the	13	A. In reading the statement it is not
14	Bossetti's available to you at the time?	14	in there.
15	A. I mean -- not -- I didn't have any	15	Q. It is not in there; right? 12:05:37
16	pictures of them at the time I was	16	A. That is correct.
17	interviewing or taking the statement from	17	Q. So how do you know that Sean
18	Mr. O'Rourke.	18	O'Rourke called the police?
19	Q. So is it your testimony that there	19	A. I am not sure. It might have been
20	were no pictures of the Bossetti's available	20	in one of the other statements that I
21	at the police station that you could have	21	recalled, or that is what was told to me at
22	shown him?	22	the time to the best of my recollection, that
23	MR. WELCH: Objection.	23	he was one of the people that called. I
24	A.. There probably was an ID photo in	24	didn't receive the call so I don't know for
25	the computer, but I didn't feel to show him	25	sure exactly.
	12:03:26		12:03:38
	12:04:02		12:04:10
	Page 414		Page 416
1	Cherry	1	Cherry
2	one picture would be the right thing to do.	2	Q. Did he tell you that he made the
3	Pictures of him on the wall?	3	call to the police?
4	MR. WELCH: Objection.	4	A. If he told me it probably would
5	A. I don't know.	5	have been in here at the time that he gave he
6	Q. He references in the statement	6	12:06:01
7	about a bartender named Mr. McKenna, do you		the statement.
8	see that; the first page, ninth line down?	7	Q. Do you think it was an important
9	A. I am sorry, how far down -- I see.	8	fact that he left out that he made the call to
10	Q. The bartender, Don McKenna --	9	the police?
11	A. Dan McKenna.	10	MR. WELCH: Objection.
12	Q. Dan McKenna, there was a problem	11	A. Well, I didn't respond to the
13	near the bathroom, do you see that?	12	scene. I imagine the officers that responded
14	A. Yes.	13	to the scene would have talked to the people
15	Q. Did you speak with Dan McKenna at	14	who called to make the complaint.
16	all as part of your investigation?	15	Q. My question to you is in asking
17	A. No, I didn't.	16	him what happened, the fact that he left out
18	Q. Do you know whether anyone did?	17	that he had called the police, don't you think
19	A. I don't think so.	18	that was an important fact to leave out of a
20	Q. Did you ask Mr. O'Rourke why he	19	statement?
21	didn't give a statement the night of the	20	MR. WELCH: Objection. You can
22	incident?	21	12:06:33
23	A. He said he tried to tell one of	22	answer.
24	the officers what he knew, but they wouldn't	23	A. It probably would have been better
25	talk to them.	24	if it was in there, yes, I agree do that. But
	12:04:43		25
	12:04:57		Q. Did the fact that he left out the
	12:05:07		12:06:45

12 (Pages 413 to 416)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 107 of 122

	Page 417		Page 419
1	Cherry	1	Cherry
2	fact that it should have been in there, did	2	discrepancy and exactly the name discrepancy.
3	that affect your view on his credibility?	3	Q. Did you discuss anything else with
4	MR. WELCH: Objection. You can	4	Mr. Hesse about the statement other than for
5	answer. 12:06:52	5	the name discrepancy? 12:08:41
6	A. No, I don't think so.	6	A. No.
7	Q. Do you know whether he was friends	7	Q. I note in here that Mr. O'Rourke
8	with George Hesse?	8	doesn't mention anything about a pool cue.
9	A. Mr. O'Rourke?	9	Did you think that was strange that he left
10	Q. Yes. 12:07:01	10	that part out? 12:08:52
11	A. They are acquaintances. You know,	11	MR. WELCH: Objection. The
12	George has been there at the time for 14	12	document speaks for itself. You can
13	years. He knows most of the people in the	13	answer.
14	village. To say friends, I don't think they	14	A. That is exactly, that was his
15	were friends. 12:07:13	15	statement, he didn't mention anything about a 12:08:56
16	Q. Do you know whether Gary Bossetti	16	pool cue.
17	is friends with Sean O'Rourke?	17	Q. The fact that he doesn't mention
18	A. I don't believe so, no.	18	anything about a pool cue, did that affect
19	Q. How about Richard Bossetti?	19	your analysis of his credibility?
20	A.. I don't believe so. 12:07:21	20	A. No, because I don't know if he saw 12:09:04
21	Q. Did you ask him why he didn't go	21	the incident with the pool cue or not.
22	to the police station to give a statement that	22	Q. In any of your statements that you
23	night?	23	took did anybody mention anything about a pool
24	A. No.	24	cue being used?
25	Q.. How long did this interview last? 12:07:30	25	A. I don't believe so, no. 12:09:14
	Page 418		Page 420
1	Cherry	1	Cherry
2	A. I would say twenty minutes to a	2	Q. Did you know that a pool cue
3	half hour.	3	allegedly had been used when you were taking
4	Q. Is there anything that he told you	4	these statements?
5	other than this purported conversation about	5	A. Yes. I believe it was in one of 12:09:23
6	the difference between Gary and Richard	6	the statements of the three witnesses that the
7	Bossetti that is not in your statement?	7	officers, the responding officers took.
8	A. Not that I can recall, no.	8	Q. The fact that none of these
9	Q. Is there anything that would	9	witnesses whose statements that you took
10	refresh your recollection as to whether there	10	mentioned a pool cue, did that affect your 12:09:36
11	was anything else that he told you that was	11	analysis of their credibility at all?
12	not reflected in your statement?	12	A. No.
13	A. No.	13	Q. Did you ask any of them about
14	Q. Did you take any other notes for	14	whether they saw a pool cue being used?
15	this statement other than for this written	15	A. I don't believe so, no. 12:09:49
16	statement that you have?	16	Q. Why not?
17	A. I don't believe so, no.	17	A. I wanted their statement, I didn't
18	Q. Did you write this statement down	18	want to put anything into their mouth, mention
19	as he was giving it to you or is it something	19	anything that could be a leading question. I
20	that you prepared after you finished the	20	wanted to know what their recollection was. 12:09:59
21	interview?	21	Q. The fact that they didn't mention
22	A. As he was giving it to me.	22	anything about a pool cue, you didn't believe
23	Q. Did you speak with George Hesse	23	that that could lead to the conclusion that
24	about this statement at all?	24	they were protecting Gary Bossetti?
25	A. Yes. I told him about the 12:08:30	25	MR. WELCH: Objection. You can 12:10:12

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 108 of 122

<p style="text-align: center;">Page 421</p> <p>1 Cherry 2 answer. 3 A. No. Q. Have you spoken to Mr. O'Rourke about the Halloween incident other than for 12:10:26 November 4th when he came in and you took his statement? 8 A. No. 9 Q.. I believe you testified that you 10 took Ms. Jaegger's statement as well; is that 12:10:36 11 correct? 12 A. That is correct. Q. When did you take that statement? 14 A. Where? Q. When? 12:10:41 16 A. I don't recall the exact date. I 17 think it may have been November 6th. If you 18 have a copy of it I can tell you exactly. Q. Where did you take the statement? 20 A. At her home. 12:10:52 Q. So you went out to her house to take the statement? 23 A. Yes. Q. Did you do that on your own or 25 somebody asked you to do that? 12:10:58</p>	<p style="text-align: center;">Page 423</p> <p>1 Cherry 2 end that any false statement made herein is 3 punishable as a class A misdemeanor under the 4 Penal Law section. 5 MR. GOODSTADT: Would you mark 12:12:02 6 this document as Cherry Exhibit 20, 7 document number 003162 through 3164. 8 (Cherry Exhibit 20, document 9 number 003162 through 3164, marked for 10 identification, as of this date.) 12:12:42 Q. I place in front of Mr. Cherry what has been marked as Cherry Exhibit 20. It is a three-page exhibit bearing Bates numbers 14 3162 through 3164. 15 Mr. Cherry, have you ever seen the 12:12:59 16 document that is marked as Cherry Exhibit 20? 17 A. Yes. Q. What is this document? 19 A. This is the statement of Jeanne C. 20 Jaeger taken on November 7, 2004. 12:13:12 Q. Who was present when you took this 22 statement? 23 A. George Hesse and myself and 24 Mrs. Jaeger. Q. Was anyone else there? 12:13:20</p>
<p style="text-align: center;">Page 422</p> <p>1 Cherry 2 A. George Hesse and I went to her 3 house to take the statement. Q. Whose decision was it to go to her house to take the statement? 12:11:07 6 A. George's. Q. Do you know why he wanted to go to her house to take a statement? 9 A. Yes. She was -- I don't believe 10 she was coming back to the island and she 12:11:16 11 lived locally, so we decided to go to her 12 house and take a statement. Q. Has she provided a statement other than for the one that you took that you are aware of? 12:11:27 16 A. Yes. Q. Did you review that statement 17 prior to going to take her statement? 19 A. Yes. Q. So if you already had her 12:11:32 21 statement why did you go and take another statement from her? 23 A. To put it in more deposition form. Q. What do you mean by that? 25 A. Take it and put the caveat on the 12:11:41</p>	<p style="text-align: center;">Page 424</p> <p>1 Cherry 2 A. No. Q. Her husband was not there? 4 A. No. Q. If you look at the bottom left 12:13:25 6 corner of pages 1, 2 and 3, is that your 7 signature? 8 A. Yes, it is. Q. Under your signature there appears 10 to be a signature. Whose signature is that? 12:13:34 11 A. That is George Hesse's signature. Q. Again he is signing as sergeant 13 103/OBPD, do you see that? 14 A. Yes.. Q. That was his shield number, 103? 12:13:48 16 A. Yes. Q. Other than for this statement did 18 he -- did the two of you take a statement 19 together from any other witnesses? 20 A. He was at the station house when I 12:13:57 21 took some of the statements. Unless he 22 actually signed it he was not there with me. Q. Now this is your handwriting? 24 A. Yes. Q. How was it decided that you would 12:14:16</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 109 of 122

<p style="text-align: right;">Page 425</p> <p>1 Cherry 2 write out the statement as opposed to Mr. 3 Hesse? 4 A. Because I had more experience in 5 taking statements, and Sergeant Hesse asked me 12:14:25 6 to take it.</p> <p>7 Q. Now she Ms. Jaeger is one of the 8 original purported victims of that night; is 9 that correct?</p> <p>10 MR. WELCH: Objection. 12:14:35</p> <p>11 A. Apparently, yes.</p> <p>12 Q. Did you reach a conclusion that 13 she was a victim that night?</p> <p>14 A. Yes.</p> <p>15 Q. Did you ask her whether she was 12:14:42 16 drinking that night?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Do you know whether she was 19 drinking that night?</p> <p>20 A. I don't know. 12:14:53</p> <p>21 Q. Do you think it would be important 22 to know whether she was drinking that night?</p> <p>23 MR. WELCH: Objection. You can 24 answer.</p> <p>25 A. I don't think it would be that 12:14:58</p>	<p style="text-align: right;">Page 427</p> <p>1 Cherry 2 Q. So why didn't you ask her? 3 MR. WELCH: Objection. Asked and 4 answered. You can answer again. 5 A. I didn't ask her. 12:16:01</p> <p>6 Q. This was done on November 7, 2004; 7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Why did you wait a week to go meet 10 with her? 12:16:10</p> <p>11 A. Availability. She was available.</p> <p>12 Q. Based on her availability?</p> <p>13 A. Yes.</p> <p>14 Q. Did you try to speak with her 15 prior to November 7, 2004? 12:16:16</p> <p>16 A. I believe I spoke to her on the 17 phone prior to that making arrangements to 18 come and talk to her about the -- telling her 19 me take the statement.</p> <p>20 Q. Was that at Mr. Hesse's suggestion 12:16:25 21 that you called her?</p> <p>22 A. I called her to see -- because she 23 had forwarded a statement, you know, a 24 statement to the Police Department.</p> <p>25 Q. My question is did you call her at 12:16:39</p>
<p style="text-align: right;">Page 426</p> <p>1 Cherry 2 important, no.</p> <p>3 Q. Well, you testified before that if 4 somebody drank a lot it could affect their 5 ability to recall events; is that correct? 12:15:06</p> <p>6 A. I would say it would depend on how 7 much they drank and if they drank at all, it 8 might.</p> <p>9 Q. So you don't think it would be 10 important to know at all whether she drank, 12:15:17 11 and if she did how much she drank?</p> <p>12 A. The important thing is what she 13 remembered.</p> <p>14 Q. But the amount that she drank 15 could affect her ability to recall; correct? 12:15:36</p> <p>16 MR. WELCH: Objection. You can 17 answer.</p> <p>18 A. I don't know.</p> <p>19 Q. But in your experience 30 years as 20 a detective you don't know one way or the 12:15:44 21 other whether the amount that somebody drinks 22 can affect their ability to recall events?</p> <p>23 MR. WELCH: Objection.</p> <p>24 Q. Is that what you are telling us?</p> <p>25 A. It is a possibility I believe. 12:15:53</p>	<p style="text-align: right;">Page 428</p> <p>1 Cherry 2 George Hesse's request or did you do it on 3 your own?</p> <p>4 A. No, I called her.</p> <p>5 Q. What was the location of the house 12:16:45 6 that you took the statement at?</p> <p>7 A. 17 Wood Lane, Smithtown, New York.</p> <p>8 Q. So you traveled out to Smithtown 9 for this?</p> <p>10 A. Yes. 12:17:03</p> <p>11 Q. Were you on duty at the time?</p> <p>12 A. Yes.</p> <p>13 Q. Was Mr. Hesse on duty at the time?</p> <p>14 A. Yes.</p> <p>15 Q. Was this statement given based on 12:17:08 16 the narrative or did you ask her specific 17 questions?</p> <p>18 A. I had spoken to her on the phone 19 earlier and going over the narrative, I had 20 the narrative that she gave us originally 12:17:19 21 faxed to us, and she redid the narrative and I 22 wrote it down as she was giving it to us.</p> <p>23 Q. Did you know her prior to speaking 24 to her on this issue?</p> <p>25 A. No. 12:17:34</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 110 of 122

	Page 429		Page 431
1	Cherry	1	Cherry
2	Q. Do you know whether Mr. Hesse did?	2	to -- this wasn't a criminal investigation, we
3	A. I believe he did, yes.	3	were trying to find out what happened, and
4	Q. Do you know whether he was friends	4	this is basically what happened as far as she
5	with her? 12:17:40	5	was concerned. And this was the basis of I
6	A. I don't know.	6	guess what Gary did and what he saw.
7	Q. Do you know whether he is friends	7	So we didn't get into anything too
8	with her husband, her late husband?	8	much after the initial incident itself. The
9	A. I don't know.	9	statement ends after she was grabbed by the
10	Q. If you look at the second page of 12:17:46	10	neck and what happened after that, then it
11	this exhibit and the second paragraph down?	11	stopped. We didn't get anything after that,
12	A. Okay.	12	after that incident occurred.
13	Q. The second line of the second	13	Q. Why didn't you go into anything
14	paragraph says: The man then lunged at me	14	after the incident occurred?
15	grabbing my neck with both hands, banging me 12:18:03	15	A. Well I just stopped at that point. 12:19:52
16	into the men's room door.	16	Q. Do you know that she went to the
17	Do you see that?	17	hospital that night?
18	A. Yes, I do.	18	A. No.
19	Q. Do you know whether she filed a	19	Q. You don't know or --
20	police report that night? 12:18:13	20	A. She didn't. 12:20:00
21	A. Did she file one that night; no.	21	Q. Did you ask her why she didn't
22	Q. How come?	22	seek any medical treatment that night?
23	A. From what -- I don't know.	23	A. No.
24	Q. Did you ask her why she didn't	24	Q. Are you aware that she actually
25	file a police report after allegedly being 12:18:24	25	went down to CJ's after Houser's? 12:20:17
	Page 430		Page 432
1	Cherry	1	Cherry
2	assaulted?	2	MR. WELCH: Objection. Asked and
3	A. Apparently she had gone to the	3	answered. You can answer again.
4	police station with Richie Bossetti, but they	4	A. Whether she went to CJ's after
5	had the three people involved in the station	5	that? 12:20:27
6	house, and Richie went in to see if it was a	6	Q. Yes.
7	good time to come in and have her give a	7	A. No.
8	statement. They said no, they were too busy.	8	Q. You don't know one way or the
9	Q. And how did you learn about that	9	other?
10	she was with Richie Bossetti when they came 12:18:47	10	A. I don't know. 12:20:30
11	back to the station?	11	Q. When did you see her original
12	A. I believe she told us.	12	statement that she faxed in?
13	Q. As part of her statement she told	13	A. I'm not sure. Sometime I guess
14	you that?	14	around the November 1st or 2nd.
15	A. No. 12:18:57	15	Q. Did you see the statement that her 12:20:49
16	Q. How come you didn't put that in	16	husband Budd Jaeger had sent in?
17	the statement?	17	A. Yes, I saw that.
18	A. Because this was the actual	18	Q. That was prior to taking her
19	incident itself.	19	statement?
20	Q. Well, don't you think that what 12:19:05	20	A. Yes. 12:20:59
21	her actions were in an effort to allegedly	21	Q. Why didn't you go get a deposition
22	report the incident was part of the incident?	22	like statement from Budd Jaeger?
23	MR. WELCH: Objection.. You can	23	A. He was not at the scene.
24	answer.	24	Q. Did you read a statement that came
25	A. You got to remember we were trying	25	in Elyse Myller? 12:21:08

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 111 of 122

	Page 433		Page 435
1	Cherry	1	Cherry
2	A. Yes.	2	A. No.
3	Q. How come you didn't take a	3	Q. Have you ever spoken to Richard
4	statement from her in a deposition form?	4	Bossetti about Halloween?
5	MR. WELCH: Objection. You can	5	A. No. 12:22:56
6	answer. 12:21:16	6	Q. I believe you testified that you
7	A. I called her after we got, after I	7	reviewed their statements -- strike that.
8	read the thing and asked her if she could	8	Did you ever review their
9	send -- she had the original statement that	9	statements that they gave in connection with
10	she wrote out and she faxed to us, she said	10	this case? 12:23:03
11	she did, I believe I testified that we asked	11	MR. WELCH: Objection. Asked and
12	her to send a notarized copy of that or	12	answered. You can answer again.
13	notarized original to us so I have it for the	13	A. Yes.
14	record. It was a matter of logistics, she	14	Q. That was the next season?
15	lived in the city and very difficult to	15	A. Yes. 12:23:07
16	interview her and she wasn't coming back out	16	Q. So I assume that their statements
17	to the Fire Island.	17	had no effect on your conclusion that you
18	Q. But other than for the statements	18	reached that Gary Bossetti had acted properly?
19	that we have looked at now as far as	19	MR. WELCH: Objection to the form.
20	depositions, did you take any other statements	20	You can answer. 12:23:27
21	in connection with your role in investigating	21	A. No.
22	this incident?	22	Q. Do you know where the Bossetti's
23	A. The ones that we looked at	23	slept that night?
24	already?	24	A. No.
25	Q. Right. 12:22:13	25	Q. Do you know what time Gary 12:23:35
	Page 434		Page 436
1	Cherry	1	Cherry
2	A. No.	2	Bossetti left the island that night?
3	Q. Were there any statements that you	3	A. I don't know. I wasn't there.
4	tried to get that you couldn't?	4	Q. Do you know how Gary Bossetti got
5	A. No. 12:22:16	5	off the island? 12:23:50
6	Q. Were there any witnesses that you	6	A. No.
7	thought would be important to get that you	7	Q. Have you ever seen the statements
8	didn't take?	8	that were provided by any of the on duty
9	A. No.	9	officers that night?
10	Q. How come you didn't interview Gary	10	A. Yes. 12:24:05
11	12:22:24 Bossetti as part of your role in the	11	Q. When did you see those statements?
12	investigation of the incident?	12	A. Again early in the '05 season.
13	MR. WELCH: Objection. Asked and	13	Q. So you had not seen them at all in
14	answered. You can answer again.	14	2004?
15	A. I didn't feel that was my	15	A. No. 12:24:14
16	function. It should be a supervisor	16	Q. And they didn't have any effect on
17	interviewing the police officer.	17	your conclusion that you reached?
18	Q. Do you know when he was	18	A. No.
19	investigated as part of the investigation?	19	Q. Did you try to speak with any of
20	A. No. 12:22:47	20	them as part of your investigation? 12:24:29
21	Q. Do you know whether he was	21	A. No.
22	drinking that night?	22	Q. Do you think it would have been
23	A. I don't know.	23	important to speak with the three of them or
24	Q. Did you ever speak with Gary	24	any of the three of them as part of your
25	Bossetti about Halloween? 12:22:51	25	investigation? 12:24:36

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 112 of 122

<p style="text-align: right;">Page 437</p> <p>1 Cherry 2 MR. WELCH: Objection. You can 3 answer. 4 A. No, that wasn't -- I don't believe 5 that was my job to do, I believe the 12:24:41 6 supervisor should be the person who 7 interviewed them. 8 Q. Have you ever spoken with any of 9 the three officers that were on duty that 10 night about Halloween? 12:24:57 11 A. I believe we -- there was a 12 question as to whether there was a cover-up 13 involved, and I believe we asked them if they 14 wanted to look at the file, come in and look 15 at it and if they had any questions they could 12:25:10 16 ask us. And I believe I was there when each 17 of them looked through the file and read the 18 statements. 19 Q. Let's go back to what you said. 20 What was the first question of a cover-up? 12:25:22 21 A. I heard someone, I believe George 22 Hesse mention that they were complaining that 23 we covered up a brutality case, and I said the 24 facts are there, I said show them the file, 25 let them read the file. I didn't know if 12:25:39</p>	<p style="text-align: right;">Page 439</p> <p>1 Cherry 2 about that allegation? 3 A. Other than when he first told me, 4 I said there was no cover up, I said the facts 5 are all there. You know, self-explanatory. I 12:26:41 6 said let them read the file. That was, you 7 know, I was kind of upset that they thought 8 that I would cover up something. 9 Q. Do you know why they believed you 10 covered something up? 12:26:57 11 A. I don't know. 12 Q. Did you ever speak to them about 13 it? 14 A. No. 15 Q. I go back to the question I asked 12:27:02 16 before. Had you ever spoken to any of the 17 three officers that were on duty that night 18 about the Halloween incident? 19 MR. WELCH: Objection. Asked and 20 answered. You can answer again. 12:27:10 21 A. Just when we asked them to look at 22 the file I was there, if they had a question 23 they could ask me. 24 Q. Did they ask you any questions? 25 A. Not that I recall. 12:27:19</p>
<p style="text-align: right;">Page 438</p> <p>1 Cherry 2 anybody had showed them the file or they read 3 it or not. I said let them read the file and 4 see what we discovered. 5 Q. Did George Hesse actually tell you 12:25:50 6 that the three of them complained to him that 7 they believed there was a cover-up? 8 A. No. 9 Q. How did you find that out? 10 A. George told me. He said I heard 12:25:56 11 that they think this is a cover-up, that we 12 are trying to cover up something. 13 Q. When was this? 14 A. Sometime in the, I believe in the 15 '05 -- the '05 season. 12:26:08 16 Q. So at some point in the '05 season 17 you learned that the three on duty officers 18 that night believed that you guys were 19 covering up an incident of police brutality? 20 A. Yes. 12:26:21 21 Q. And George Hesse told you that? 22 MR. WELCH: Objection.. You can 23 answer. 24 A. I believe so. 25 Q. Did you ever speak to George Hesse 12:26:28</p>	<p style="text-align: right;">Page 440</p> <p>1 Cherry 2 Did you say anything to them? 3 A. I said the file is here, read the 4 file. They read the file and there was no 5 questions. They didn't ask me what happened, 12:27:30 6 why did I feel this way about the case. I 7 said this is what happened. 8 Q. What do you recall if anything -- 9 what's the substance if you recall of any 10 conversation that you ever had with Frank 12:27:51 11 Fiorillo about Halloween? 12 A. I don't recall other than asking 13 him to review the file, having any 14 conversation with him about it. 15 Q. You actually asked him to review 12:28:00 16 the file? 17 A. I said the file is here, I asked 18 him to come in and read the file. 19 Q. Did he come in by himself or with 20 other people? 12:28:10 21 A. I don't know. I think they each 22 came in individually to read it. I don't 23 think they came together. 24 Q. Who was in the room with 25 Mr. Fiorilli when he reviewed the file? 12:28:14</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 113 of 122

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 114 of 122

<p style="text-align: right;">Page 445</p> <p>1 Cherry 2 A. No, sir. 3 Q. Have you ever spoken with anyone 4 at the District Attorney's office about the 5 Halloween incident? 12:31:56 6 A. No. 7 Q. Have you ever been contacted by 8 anyone at the District Attorney's office about 9 the Halloween incident? 10 A. No. 12:32:02 11 Q. Did you go into Houser's as part 12 of your investigation? 13 A. Yes. 14 Q. Why did you go there as part of 15 your investigation? 12:32:26 16 A. I had never been in Houser's, so I 17 wanted to in and see what it looked like. 18 Q. Did you speak with the bartender 19 as part of your investigation? 20 A. I didn't, no. 12:32:35 21 Q. Do you know if anyone did? 22 A. I believe George spoke to someone 23 there that day. There was only one person in 24 the bar at the time cleaning up to close the 25 bar, I believe George spoke to him. 12:32:46</p>	<p style="text-align: right;">Page 447</p> <p>1 Cherry 2 A. Okay. 3 Q. One page exhibit bearing Bates 4 2662? 5 A. Okay. 12:34:19 6 Q. Have you ever seen the document 7 marked as Cherry 21? 8 A. I believe I have, yes. 9 Q. What is this document? 10 A. It is a letter advising members 12:34:25 11 about the annual department meeting to be held 12 in this case on April 2nd, at noon, 1200 13 hours. 14 Q. Did you receive a copy of this 15 memo prior to the meeting? 12:34:43 16 A. I believe so, yes. 17 Q. How did you get a copy of it? 18 A. By mail. 19 Q. Was it standard practice to send a 20 letter like this announcing the preseason 12:34:52 21 meeting? 22 MR. WELCH: Objection. You can 23 answer. 24 A. I believe so, yes. 25 Q. Prior to -- strike that. 12:35:00</p>
<p style="text-align: right;">Page 446</p> <p>1 Cherry 2 Q. You testified last time about the 3 preseason meetings that the department would 4 have; is that correct? 5 A. Yes. 12:32:57 6 Q. How were you alerted to the 7 meetings? 8 A. A letter. 9 MR. GOODSTADT: Would you mark 10 this document as Cherry Exhibit 21, 12:33:08 11 document numbered 002662. 12 (Cherry Exhibit 21, document 13 numbered 002662, marked for 14 identification, as of this date.) 15 Q. Did you take pictures at Houser's 12:33:49 16 Bar? 17 A. Yes. 18 Q. Why did you do that? 19 A. I think George took the pictures, 20 because there were pictures taken. 12:33:56 21 Q. How come you took pictures? 22 A. Just to have a record of what the 23 area looked like. It is a very small area. 24 Q. Now, I focus your attention on 25 what has been marked as Cherry 21. 12:34:11</p>	<p style="text-align: right;">Page 448</p> <p>1 Cherry 2 Did you actually attend the 3 meeting? 4 A. Yes. 5 Q. This is the one that you testified 12:35:10 6 to last time that George Hesse ran the 7 meeting? 8 MR. WELCH: Objection. I don't 9 believe that was the testimony, but you 10 can answer. 12:35:18 11 MR. GOODSTADT: I think he said 12 the meeting in 2006 was run by George 13 Hesse. In fact I am pretty sure he did. 14 A. I don't recall that, but I believe 15 he did run the meeting. 12:35:26 16 Q. Prior to the meeting did you speak 17 with George Hesse about what was going to 18 happen at the meeting? 19 A. No. 20 Q. Did you speak to George Hesse at 12:35:34 21 all about staffing issues prior to meeting? 22 A. No. 23 Q. Did you know that the five 24 plaintiffs in this case were going to be 25 terminated prior to that meeting? 12:35:46</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 115 of 122

<p style="text-align: right;">Page 449</p> <p>1 Cherry 2 A. No. 3 Q. When did you learn that the five 4 plaintiffs in this case were terminated at 5 Ocean Beach? 12:35:55 6 A. We were waiting outside for the 7 meeting to start and they were called in 8 first, you know, go into the office and when 9 they came out they advised, advised us that 10 they were being terminated. 12:36:12 11 Q. Who advised you? 12 A.. I don't recall who told me, but I 13 found out that they were being terminated. 14 Q. You don't recall how you learned 15 that they were being terminated? 12:36:23 16 A. Somebody told me. 17 Q. Did you learn before the meeting 18 started or did you learn while you were 19 standing out there waiting? 20 A. Before the meeting started while 12:36:30 21 we were outside waiting. 22 Q. Did George Hesse tell you that 23 they were being terminated? 24 A. No. 25 Q. Did you hear the reason as to why 12:36:37</p>	<p style="text-align: right;">Page 451</p> <p>1 Cherry 2 Q. Did anyone actually advise you 3 that performance was the reason that they were 4 let go? 5 A. Not that I can recall. 12:37:26 6 Q. So sitting here today your belief 7 that it was performance related was just 8 conjecture? 9 A. Yes. 10 Q. Did you ever discuss with George 12:37:42 11 Hesse why he let the five of them go? 12 A. No. 13 Q.. Did you ever discuss with Chief 14 Paradiso why the five of them were let go? 15 MR. WELCH: Objection to the form. 12:37:53 16 A. No. 17 Q. Now, this memo that is marked as 18 Cherry Exhibit 21 instructs you -- strike 19 that. It says all officers are required to 20 bring all issued equipment with them for 12:38:07 21 inspect. Do you see that? 22 A. Yes, I do. 23 Q. Does that refer to you as an 24 officer? 25 A. I was not an officer at the time, 12:38:13</p>
<p style="text-align: right;">Page 450</p> <p>1 Cherry 2 they were being terminated? 3 A. No. 4 Q. Sitting here today do you know the 5 reason why they were told they were 12:36:43 6 terminated? 7 A. I guess it was performance issues. 8 Q. What is the basis of that? 9 A. Just my, from what I can -- you 10 know, what I thought. 12:36:54 11 Q. What was the basis of your 12 thinking that? 13 A. I don't know what other reason 14 there could be? 15 Q. Well, did you review any 12:37:02 16 performance issues? 17 MR. WELCH: Objection. Asked and 18 answered at the previous deposition. 19 A. No. 20 Q. Did anyone ever advise of you any 12:37:12 21 performance problems with any of the five 22 plaintiffs? 23 A. Advised me? 24 Q. Yes. 25 A. No. 12:37:21</p>	<p style="text-align: right;">Page 452</p> <p>1 Cherry 2 I was a dispatcher. 3 Q. So you didn't bring any equipment 4 with you for inspection? 5 A. I brought my shield and my ID 12:38:19 6 card. 7 MR. WELCH: The seven hours is up 8 now. How much time do you think in 9 addition to that you would need. 10 MR. GOODSTADT: I should be done 12:38:35 11 in 15 or 20 minutes. Not that much left. 12 MR. WELCH: Okay. 13 Q. It says here on line 4, it says 14 new ID will be issued to all. Do you see 15 that? 12:38:49 16 A. Okay. 17 Q. Was new ID issued to you at that 18 meeting? 19 A. I don't recall. Possibly, but I 20 don't recall. 12:39:16 21 Q. What does your ID from Ocean Beach 22 say; does it have your title on it? 23 A. Yes. 24 Q. What does it say? 25 A. Dispatcher. 12:39:23</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 116 of 122

	Page 453	Page 455
1	Cherry	Cherry
2	Q. Did you ever an ID that said	wasn't.
3	police officer?	Q. Did Mr. Hesse tell you, strike
4	A. Yes.	that.
5	Q. When did you turn that in? 12:39:27	Did Mr. Hesse discuss anything 12:41:02
6	A. When I resigned.	other than his saying there were certain
7	Q. Where was the actual meeting held?	people that were not coming back, did he say
8	A. In the boat house which is next to	anything else about the five police officers
9	the ferry terminal.	who are plaintiffs in this case?
10	Q. Who attended the meeting? 12:39:39	A. Not that I can recall. 12:41:14
11	A. All the officers that were able to	Q. Did he mention the names of the
12	attend. I don't know exactly how many that	people that were not coming back?
13	showed up, but the officers that came attended	A. Not that I recall.
14	the meeting.	Q. Isn't it true that he said that Ed
15	Q. Do you know who Chris Moran is? 12:39:54	Carter and Tom Snyder were being fired because 12:41:25
16	A. Yes.	they were going to wear a wire for the DA?
17	Q. Was Mr. Moran at that meeting?	MR. WELCH: Objection to the form.
18	A. I don't know for sure.	A. I don't recall that.
19	Q. You don't recall one way or the	Q. Is there anything that would
20	other? 12:40:00	refresh your recollection? 12:41:39
21	A. No.	A. No.
22	Q. Did Mr.. Hesse address at that	Q. Do you recall Mr. Hesse saying
23	meeting the fact that he had just terminated	anything about the DA at that meeting?
24	some officers?	A. I don't remember.
25	A. I believe he mentioned it, yes. 12:40:08	Q. You don't recall him saying 12:41:47
	Page 454	Page 456
1	Cherry	Cherry
2	Q. What did he say about that?	something about Arnold Hardman's (phonetic)
3	A. I don't recall the exact words.	attorney telling him that Snyder and Carter
4	Q. Sum and substance what did he say?	were going to wear a wire in connection with
5	A. That some people were not coming 12:40:15	the Gilbred incident? 12:41:58
6	back.	MR. WELCH: Objection to the form.
7	Q. What did he say about that; did he	You can answer.
8	give any explanation as to why?	A. No, I don't.
9	A.. Not that I can recall.	Q. Do you remember him saying
10	Q. Did he say who wasn't coming back? 12:40:23	anything at all about Arnold Hardman's 12:42:04
11	A. No, but by that time we had known	attorney?
12	who was not coming back, the five officers	A. No.
13	that were not coming back.	Q. Did you ever speak with Arnold
14	Q. How did you know that?	Hardman about any of the five plaintiffs in
15	A. Because they gathered around -- 12:40:34	this case? 12:42:11
16	they came out and told me they were not coming	A. No.
17	back.	Q. Anyone ask any questions as to why
18	Q. At that point in time did you know	the five officers were let go that day?
19	that Tom Snyder was being let go?	A. I don't believe so.
20	A. I found out the five people who 12:40:44	Q. Did you speak with any other 12:42:25
21	were being let go, yes.	officers that were there -- strike that.
22	Q. So that day you found out that Tom	Did you speak with any other
23	Snyder was being let go?	people who were there about the fact that some
24	A. To the best of my recollection.	officers had been terminated?
25	As I said I don't recall who was there and who 12:40:54	A. Other than the surprise, no, that 12:42:37

22 (Pages 453 to 456)

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 117 of 122

Page 457	Page 459
<p>1 Cherry</p> <p>2 they were let go. We may have discussed it</p> <p>3 with somebody what happened, what is going on.</p> <p>4 I don't recall a specific conversation I had</p> <p>5 with anybody about it other than general 12:42:52</p> <p>6 conversation that, you know, surprise that</p> <p>7 this happened.</p> <p>8 Q. Do you recall the sum and</p> <p>9 substance of any of that general conversation?</p> <p>10 A. As I said it was a surprise of 12:43:02</p> <p>11 what was going on.</p> <p>12 Q. Who expressed surprise?</p> <p>13 A. I did myself, you know, everybody</p> <p>14 was surprised or, you know, just became aware</p> <p>15 of it and we were -- it was a surprise to us. 12:43:16</p> <p>16 Q. Why were you surprised?</p> <p>17 A. Because, you know, it happened.</p> <p>18 Q. You had no knowledge that it was</p> <p>19 going to happen prior to that day?</p> <p>20 A. No, sir. 12:43:29</p> <p>21 MR. WELCH: Objection. Asked and</p> <p>22 answered. You can answer.</p> <p>23 Q. Were there any officers hired,</p> <p>24 newly hired officers for that season?</p> <p>25 A. I don't recall. 12:43:38</p>	<p>1 Cherry</p> <p>2 Chief Paradiso went on sick leave.</p> <p>3 Q. But it was after Paradiso went on</p> <p>4 sick leave that Mr. Hesse became the superior</p> <p>5 officer in the village? 12:45:01</p> <p>6 A. Well, he was the sergeant, so if</p> <p>7 the chief is on sick leave he was the only</p> <p>8 other supervisor..</p> <p>9 Q. Paul Trosko, do you recall him</p> <p>10 being hired as a full-time officer that year? 12:45:13</p> <p>11 A. I am not sure the exact date Paul</p> <p>12 was hired as a full-time officer.</p> <p>13 Q. How about Francis Foti, do you</p> <p>14 recall him being hired as a full-time officer</p> <p>15 that year? 12:45:23</p> <p>16 A. I am not sure of the exact date</p> <p>17 that he was hired.</p> <p>18 Q. Is George Hesse currently on</p> <p>19 modified duty?</p> <p>20 A. I believe so, yes. 12:45:32</p> <p>21 Q. Does he carry a weapon?</p> <p>22 A. I don't think so.</p> <p>23 Q. Does he wear a uniform?</p> <p>24 A. Yes.</p> <p>25 Q. Same police uniform he has always 12:45:41</p>
Page 458	Page 460
<p>1 Cherry</p> <p>2 Q. Isn't it true that Hesse called at</p> <p>3 least some of the plaintiffs in this case rats</p> <p>4 at that meeting?</p> <p>5 MR. WELCH: Objection. Form. 12:43:54</p> <p>6 Foundation. You can answer.</p> <p>7 A. I don't recall.</p> <p>8 Q. You don't recall one way or the</p> <p>9 other?</p> <p>10 A. No. 12:43:59</p> <p>11 Q. Was there any discussion of any</p> <p>12 budget cuts occurring that year at that</p> <p>13 meeting?</p> <p>14 A. Not that I know of.</p> <p>15 Q. Have you ever heard, sitting here 12:44:13</p> <p>16 today have you ever heard that there were any</p> <p>17 budget cuts for that season?</p> <p>18 A. Not that I recall, no.</p> <p>19 Q. This is the first year that Hesse</p> <p>20 was the senior officer in the village; is that 12:44:33</p> <p>21 correct?</p> <p>22 MR. WELCH: Objection to the form.</p> <p>23 Foundation. You can answer.</p> <p>24 A. I don't recall George's status. I</p> <p>25 know -- I am not sure when the exact date 12:44:57</p>	<p>1 Cherry</p> <p>2 worn?</p> <p>3 A. Not the same uniform. He wears</p> <p>4 Khaki pants and a blue shirt.</p> <p>5 Q. What does that signify? 12:45:55</p> <p>6 A. That is just what he wears.</p> <p>7 Q. When did he start wearing that</p> <p>8 uniform?</p> <p>9 A. Last year. Last season.</p> <p>10 Q. The blue shirt, that is an Ocean 12:46:07</p> <p>11 Beach Police Department shirt?</p> <p>12 A. He wore a blue shirt with a shield</p> <p>13 on it. Then there came a point where he just</p> <p>14 wore a blue shirt without the shield on it.</p> <p>15 Q. When did that happen? 12:46:28</p> <p>16 A. Sometime during the season last</p> <p>17 year.</p> <p>18 Q. During the '08 season?</p> <p>19 A. Yes, to the best of my</p> <p>20 recollection. I don't remember exactly when 12:46:35</p> <p>21 he switched.</p> <p>22 Q. When was the last time that you</p> <p>23 saw George Hesse?</p> <p>24 A. Last time I saw him; probably in</p> <p>25 October. I mean at work or -- 12:46:46</p>

Case 2:07-cv-01215-SJF-ETB Document 170-13 Filed 01/15/10 Page 118 of 122

<p style="text-align: center;">Page 461</p> <p>1 Cherry 2 Q. At any point in time? 3 A. I saw him at the Christmas party. 4 Q. Where was the Christmas party? 5 A. At Portly Villager. 12:46:56 6 Q. Who paid for that party? 7 A. It was a cash bar. 8 Q. No one paid -- no one from the 9 village paid for that party? 10 A. Not to my knowledge, no. 12:47:14 11 Q. Do you know if anyone else has 12 been placed on modified duty in the last two 13 years at Ocean Beach? 14 MR. WELCH: Objection. You can 15 answer. 12:47:25 16 A. Not to my knowledge. 17 Q. Do you know who Mitch Burns is? 18 MR. WELCH: Objection. Asked and 19 answered. You can answer again. 20 A. No. 12:47:34 21 Q. Have you ever been to a Christmas 22 party for the Ocean Beach Police Department at 23 the Argyle Grill in Babylon? 24 A. Yes. 25 Q. What year did you go to that? 12:47:47</p>	<p style="text-align: center;">Page 463</p> <p>1 Cherry 2 Q. What was the web-site that blog 3 was on? 4 A. I am trying to think of the name 5 of it. The Schwartz Report or something like 12:48:50 6 that. 7 Q. When did you first review that? 8 A. It had been going on for I guess a 9 year or so, nothing recently, but I know the 10 last year or two there was a blog about that, 12:49:08 11 Ocean Beach. 12 Q. When did you first review it? 13 A. When it first came on, I don't 14 know the exact date. 15 Q. Where did you review it? 12:49:18 16 A. On the computer. 17 Q. On which computer? 18 A. My home computer. 19 Q. Did you ever review it at the 20 computer at the police station at Ocean Beach? 12:49:27 21 A. I may have once or twice, yes. 22 Q. Have you ever posted on the blog? 23 A. Yes. 24 Q. How many times? 25 A. I believe four. 12:49:37</p>
<p style="text-align: center;">Page 462</p> <p>1 Cherry 2 A. I believe that was the first year 3 that I was there, maybe the first two years 4 the Christmas party was there. Then it 5 switched over to the Portly Villager. 12:47:58 6 Q. Do you recall being at the '05 7 Christmas party? 8 A. Yes. 9 Q. Do you know who paid for that 10 party? 12:48:10 11 A. No. 12 Q. Is it true that the PBA paid for 13 that party? 14 MR. WELCH: Objection. 15 A. I don't know for sure. 12:48:14 16 Q. Did you have to pay for that 17 party? 18 A. I don't recall if that was a cash 19 bar or not. 20 Q. Have you ever reviewed any blogs 12:48:21 21 in connection with the Ocean Beach Police 22 Department? 23 A. Yes, there was a blog that 24 contained an Ocean Beach Police Department 25 blog. 12:48:43</p>	<p style="text-align: center;">Page 464</p> <p>1 Cherry 2 Q. What name do you post on there? 3 A. No particular name, I think it is 4 like 12345. 5 Q. That is the name, 12345? 12:49:48 6 A. Well, you just go on, you just put 7 something down to get on the blog. 8 Q. What was the -- when did you post 9 on the blog? 10 A. The exact -- I can give you the 12:49:59 11 exact dates if you want them. 12 Q. Can I get the exact dates? 13 MR. WELCH: You have it written 14 down; you want to leave a space? 15 A. Yes. I thought I had my book with 12:50:07 16 me, but I don't know. 17 Q. Leave a space in the transcript 18 for that. 19 TO BE FURNISHED: _____ 20 _____ 12:50:13 21 _____ 22 A. I believe I posted four times.. I 23 don't have the exact dates and times. 24 Q. Why did you post on the blog? 25 A. Because I felt there was some -- a 12:50:21</p>